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A DEFENCE

OF

CAPITAL PUNISHMENT,

BY REV. GEORGE B. CHEEVER, D.D,

AND

AN ESSAY

ON THE

GROUND AND REASON OF PUNISHMENT,

WITH SPECIAL REFERENCE TO

THE PENALTY OF DEATH;

BY TAYLER LEWIS, Esq.

WITH AN APPENDIX,

CONTAINING A REVIEW OF BURLEIGH ON THE DEATH PENALTY.

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PREFACE.

In the present condition of the question discussed in the following pages, no prefatory apology can be deemed necessary. The violent, and, in many respects, unscrupulous attack not only upon an important department of criminal jurisprudence, but also upon some of the deepest fundamental principles which lie beneath all legislation and even all morals, furnishes sufficient ground and reason for the defence attempted in these Essays. The several parts contain in themselves, or as prefixed, enough of introductory explanation to do away the necessity of any general extended preface. The writers, however, wish to call the attention to one particular idea, which, it is hoped, the reader will keep before his mind throughout. It is this:—that we strictly hold the *negative position of defence*. It is plausibly urged, that those who maintain the death penalty, should bear the burden of affirmative proof. But no intelligent reader can fail to perceive the weak *petitio principii* contained in this assumption. It is a sheer begging the question—a taking for granted that *prima facie* the common sense and practice of mankind, the dictates of religion, the precepts of morals, and the general current of legislation, have been all the other way. The writers of the following pages maintain, on the other hand, that the very reverse of this is the truth. Our opponents are the *innovators;*

they are trying new *experiments;* they go counter to the universal sentiment of mankind in all ages; they denounce, as inhuman and barbarous, a law which Revelation expressly assures us was given by the Almighty himself—once to all the race, and subsequently (a position which no one except those who deny the inspiration of the Bible can ever call in question) to his own peculiar and favoured people; they are in opposition to the general current of ancient and modern legislation; they are putting forth new views of law, and government, and penalty, and of some of the most fundamental principles of political philosophy. We therefore most justly maintain, that upon them, as *innovators* and *experimenters* in respect to vital principles, lies the *onus probandi;* and that, in addressing themselves to legislative bodies, they are bound to make out the affirmative by most clear and undoubted proofs, instead of that general declamation which they are so apt to use in place of argument.

We wish all readers, and especially all legislators, into whose hands this work may come, to keep this thought prominently before them. It will, of itself, be a sufficient answer to a great deal of the sophistry put forth by these innovating reformers. It certainly should be a most serious consideration with every law-maker who has any proper sense of the solemn responsibility of his position, that any proposed measure bears upon its face the evidence of being a mere experiment, in opposition to the long-settled opinions, practice, and legislation, not of special times and places, but of the human race—with perhaps a few unimportant and inconclusive exceptions. With all such it should be a most solemn maxim—not *rashly*, or without long, and serious, and most faithful examination, to change what has been deemed fundamental in almost all ages and nations, and in all governments, of what-

ever variety as to form or freedom. Has such satisfactory proof been presented, and such long, and serious, and faithful examination been made by those who advocate this new experiment of the abolition of capital punishment? If not, this alone, without anything else, is, for the present, a sufficient reply to their petitions for reform. There is another most serious consideration for the truly prudent and conscientious legislator, and one which should make him pause long before he acts. It is, that the step once taken, cannot, if found injurious, be soon if ever recalled.

Facilis descensus Averni;
Sed revocare gradum—
Hoc opus, hic labor est.

Better, therefore, let things remain as they are, until proofs about which there can be no possible doubt, and arguments so perfectly convincing as to admit of no possible answer, are brought in favor of the change.

CONTENTS.

PART I.

CHAPTER I. PAGE

Theological and Religious Aspect of the Question, . . . 1

CHAPTER II.

Nature and Origin of the Right to Punish.—True Ideas of Punishment, Government, Law, Penalty, &c.—How far and in what sense Law and Government may be said to be dependent on the consent of the governed, ... 7

CHAPTER III.

The Subordinate Utilitarian Views of Reformation and Prevention enter into the Scheme of Government; but even these derive all their efficacy and utility from being connected with the Higher Idea of Retribution, ... 14

CHAPTER IV.

Divine and Human Laws from the same ultimate source and with the same sanctions.—Punishment in both has respect to the Intrinsic Demerit of Crime, ... 20

CHAPTER V.

Retributive or Vindicative Justice.—Distinction between Vengeance and Revenge.—Innate feeling of Indignation against Wrong, and Desire for its Punishment, ... 28

CHAPTER VI.

Doctrine of Retributive Justice is consistent with the personal Forgiveness of Injuries, and furnishes the only view by which Law and Government are raised above the exercise of Individual Revenge, ... 38

CHAPTER VII.

Consideration of the common argument, that the infliction of

PAGE

the Penalty of Death for Murder tends to increase the amount of Crime by making men revengeful, ... 42

CHAPTER VIII.

Public Executions, and the conduct, in relation to them, of a portion of the Public Press, ... 48

CHAPTER IX.

Effect of the Punishment of Death on the public mind in deterring men from Crime.—Educating power of Law, . . . 53

CHAPTER X.

Gradations of Punishment to be estimated primarily according to the doctrine of Retributive Justice or Intrinsic Demerit, although affected in a subordinate degree by other considerations.—How deranged by the abolition of Capital Punishment, ... 64

CHAPTER XI.

The Lex Talionis.—Importance of the Old Testament as an Inspired portion of God's Revelation.—Infidel contempt for this part of the Scriptures, and the undefined semi-sceptical and semi-infidel view entertained respecting it by many in the Church.—Distinction between the Old Testament and the New, ... 71

CHAPTER XII.

Did Christ mean to abolish Civil Government, or all violent resistance to evil? 82

CHAPTER XIII.

Sketch of the Argument from the Old Testament.—From the Jewish Statute, and the Patriarchal Command, ... 87

CHAPTER XIV.

Universality of the sentiment and of the law which takes life for murder.—Spurious public opinion in opposition.—False and deceptive method of getting up such spurious sentiment, 99

CHAPTER XV.

Examination of the claim to a superior humanity put forth by the opponents of Capital Punishment.—Speculative, compared with practical benevolence, ... 108

PART II.

CHAPTER I. PAGE

The argument from Scripture.—The original ordinance considered, ... 123

CHAPTER II.

Argument from Scripture continued. Circumstances of the human race, when this ordinance was promulgated, . . 131

CHAPTER III.

Argument from Scripture continued.—Universality and comprehensiveness of this ordinance, ... 137

CHAPTER IV.

Argument from Scripture continued.—The Mosaic Statutes, a luminous commentary upon this ordinance, ... 142

CHAPTER V.

Argument from the New Testament.—The ordinance not abrogated, but confirmed.—Proof from Paul's writings and experience, ... 146

CHAPTER VI.

Proof from the consentaneousness of Divine Providence, . 153

CHAPTER VII.

Argument from Scripture continued.—Purpose and design of this ordinance.—Its sanction of the civil magistracy.—Of the Origin of Government.—Of its power to take life.—Benevolent design of this ordinance, ... 159

CHAPTER VIII.

Argument from Scripture connected with the argument from expediency.—Wisdom and necessity of this ordinance.—Commonness of the spirit of Cain in human society, . . . 172

CHAPTER IX.

Argument from Expediency continued.—Consentaneousness of the Law of Nature with this Enactment.—The Power of Conscience, and the Necessity of Righteous Law to sustain it, 178

CHAPTER X.

PAGE

Objects of the Punishment of Crime.—What constitutes the Perfection of Criminal Jurisprudence?—The Theories of Godwin and Hume.—Difference between Justice and Revenge, 185

CHAPTER XI.

The Ends of Punishment further considered.—False View of the Matter.—Difference between Punishment in this Life and in the Life to come, ... 192

CHAPTER XII.

Fearfulness and Efficacy of the Punishment by Death.—Causes of the Dread of Death.—Prospect of the Guilty in Eternity.—Objection considered, of cutting off the Criminal in his Sins.—The Answer of Grotius.—Answer from Fact and Experience.—Also from the Divine Providence and from Expediency.—Objection considered, of the unwillingness of juries to convict in cases of murder, ... 190

CHAPTER XIII.

Occasion of the prejudice against Capital Punishment. Injurious consequences of the severity of sanguinary codes.—Difference between the reformation of penal codes, and the annihilation of penalty.—The abrogation of the punishment of death a premium on the crime of murder.—Recklessness of the desire of concealment, ... 207

CHAPTER XIV.

Proposed plan of Imprisonment for Life, instead of the Penalty of Death, considered, ... 217

CHAPTER XV.

Tendency of the common reasonings against Capital Punishment, to weaken the sanctions of the Divine Government.—Retributive justice a reality.—Prophetic aspect of the penalty of death for murder.—Power and solemnity of the argument from analogy.—Conclusion, ... 220

PART III.

ARGUMENT IN REPLY TO J. L. O'SULLIVAN, ESQ.

During the Debate in the Broadway Tabernacle, in 1843.

PAGE

ARGUMENT OF THE FIRST EVENING, ... 235

§ 1. The ordinance in Genesis intended as a command. § 2. Methods proposed for evading the force of this ordinance. § 3. Proof of the universal application, and unlimited duration of this statute. § 4. Proof and illustration of the meaning of this statute from the succeeding legislation among the Hebrews. § 5. Proof and illustration from the Epistle to the Romans, and from Paul's example. § 6. Suspicious nature of any argument which begins by depreciating the authority of God's word. § 7. The great sacredness and protection of human life produced amongst the Hebrews by this statute. § 8. This statute repromulgated and established in the New Testament. § 9. Concurrent practice and opinion of the whole ancient world. § 10. Tenor of the Grecian poets on this point, and illustrations of the judgment of the human mind, in the case of the inhabitants of Melita with Paul. § 11. Consideration of the slander thrown upon this statute as if it were vindictive—benevolence of this statute. § 12. Mistake concerning the nature of benevolence. § 13. Conclusion of the Scripture argument.—Nature of the attempt to abolish this statute.

ARGUMENT OF THE SECOND EVENING, . . . 268

§ 1. Reason of the statute perpetual. § 2. Enormity of the guilt of murder, and necessity of a penalty that shall make it paramount in its retribution, as it stands in its guilt. § 3. Statement of the question of expediency. § 4. Power of the fear of death as a punishment—illustrated in the case of Colt. § 5. Objection considered, of the uncertainty of the penalty.—Salutary power of the penalty of death for murder, as certain. § 6. The protective power of this penalty for society.—Necessity of having the greatness of the guilt of murder marked to the conscience of the murderer, by the penalty. § 7. Injustice and inhumanity of the abolition of the penalty of death for murder. § 8. Objection considered of the danger of mistaking the innocent for the guilty. § 9. Demonstration continued of the inhumanity and injustice of the abolition of Capital Punishment. § 10. The statistical argument—its weakness and its sophistry. § 11. Cause of the prejudice against this penalty.—Real nature of the statistical argument. § 12. Absurdity detected and illustrated. § 13. Russia, Tuscany, and Belgium.

PAGE

ARGUMENT OF THE THIRD EVENING, . . . 296

§ 1. Importance of adhering to the authority of Scripture on this subject. § 2. Wisdom and goodness of the penalty of death for murder as the foundation of criminal jurisprudence. § 3. Two things incontrovertible; men's love of life, and their fear of death. § 4. Contradictions in the argument against the penalty of death. § 5. Inhumanity to the criminal and to society of striking out this penalty. § 6. This penalty confirmed by the law of Christ, and demonstrable as a duty springing from the great law of love. § 7. This penalty necessary to preserve society from the anarchy and violence of private revenge. § 8. The effort against this penalty a mock humanity, but a real cruelty—this demonstrated by incontrovertible statistics. § 9. Weakness and falsehood of the statistical argument against this penalty. § 10. Length of time necessary for a proper statistical experiment. § 11. State of the case in Russia—Capital Punishment not abolished there, but held in the power of the Emperor. § 12. Belgian Statistics in favour of Capital Punishment. § 13. Powerful historical argument in favour of Capital Punishment. § 14. A final objection answered. § 15. Final attempt to evade the statute.—Absurdity of the evasion demonstrated. § 16. The reason given for the penalty makes it absolutely certain that this ordinance is an injunction. *Conclusion.* The right mode of directing Public Opinion.

APPENDIX.

BRIEF EXAMINATION OF A LATE WORK ENTITLED 'THOUGHTS ON THE DEATH PENALTY,' BY CHARLES E. BURLEIGH, ... 333

ESSAYS ON PUNISHMENT BY DEATH.

PART FIRST.

CHAPTER I.

THEOLOGICAL AND RELIGIOUS ASPECT OF THE QUESTION.

MANY reasons might be assigned for the necessity of bestowing peculiar attention upon the present efforts for the abolition of capital punishment, and for the most strenuous and watchful opposition on the part of all those who would conserve the most important truths that enter into the political and religious structure of society. It must be confessed, that these are days of radical disquietude; and among all the disastrous signs of change, there is no one movement, perhaps, as specious in its appearance, and which yet combines so many errors—errors, too, which most vitally affect, not only the temporary well-being, but the very existence of any established civil polity. It threatens to be the more mischievous, because it has so little that is alarming in its outward show. It professes to have nothing revolutionary in its character, and yet, in some strange and unaccountable

way (unaccountable to those who examine only its external phasis), it is every where advocated by, or at least receives the warm sympathy of all who are known as most radical, most revolutionary, most afloat on all that have long been regarded as first principles in politics and religion. It claims an extra benevolence, a most refined humanity, and sometimes, even, professes to be transcendently Christian. Some good men, deceived by its specious garb, may be found among its advocates. Strange as it may seem, however, wherever you meet with a ferocious popular demagogue, who would not hesitate a moment to involve a state in all the horrors of civil or foreign strife, on the most doubtful question that appeals to popular feeling; or wherever you find a reforming infidel, whose very soul is troubled at the thought that political institutions should derive any sanctions whatever from revelation or religion, there you have an active and zealous advocate of the abolition of capital punishment. Did the measure aim simply at a change in some of the inferior details of criminal jurisprudence,—did it propose alterations, even in the higher and most important departments, as mere experiments grounded on expediency, without bringing in, or taking such a line of argument as would necessarily draw in the discussion of vital principles—in these cases, we say, it might be left to work its own cure by an experience of the temporary evils it would produce. We might regret that so serious a change should be attempted on such low and defective grounds; we might doubt

the expediency (viewing it as a mere question of expediency) of any lower punishment than death for the crime of wilfully taking life; we might esteem it a serious question, to say the least, whether the whole matter had not been fixed by that most ancient divine legislation to which all Christian nations are supposed to submit, and might consider it very doubtful whether, in respect to this crime, experiments were at all allowable; yet still it would not present itself in so alarming an aspect as at present, when the grounds and reasons on which it is advocated go, when carried out, to the entire destruction of whatever is strictly penal in legislation, remove the very idea of punishment, although they may retain the word, strike at the vital principles of all law, and exhibit, on the part of its advocates, a most peculiar virulence at the bare suggestion of the thought, that there may be any thing of a divine, a religious, or a theological nature in the institutions and sanctions of government.

The real question involved in this discussion is, in the highest and deepest sense, a religious one; and when we say this, we mean something more than what some would style an affair of bandied texts. In one respect, it is useless to enquire which party in the debate give it this character. It cannot be otherwise. Religious and theological considerations enter into its very nature, and none but the most shallow disputants would ever imagine that it could be discussed, as it ought to be discussed, on any lower grounds. If, however, it be inquired, as matter of fact, who has done the most towards pre-

senting it in its religious aspect, we unhesitatingly answer, the advocates for the abolition of capital punishment. Whether they intend it or not,—whether they are even conscious of it or not,—their theological instincts (the best term we can apply to those strong biases, which, whilst they lack the definiteness, have all the virulence of the most bigoted creeds)—their theological instincts, we say, or their strong dislike to what the best and wisest of mankind have ever regarded as vital and established truths, are too violently obtruded to be at all mistaken. Their claims to superior humanity are hereafter examined; we simply maintain, at present, that the religious or irreligious bearing of our opponents on this question is one which they are unable to conceal, and which makes itself manifest in almost any position they may assume. When, in this connection, we speak of theological or religious biases, we mean not those well understood differences which divide the more common Christian sects, and which present only varied aspects of the same fundamental truths. We refer especially to those theories which cut beneath the root of all true government, whether Divine or human, beneath all true moral and religious obligation, and leave no common platform, no first principles, on which their advocates can meet and reason with those who derive opposite conclusions. Let these men assume what axioms, and put forth what theories they choose, they seldom fail soon to bring themselves on grounds necessarily involving arguments drawn from religious or anti-religious

considerations; and yet, when met in the only way they can be met, and ought to be met, how soon do we find them complaining of the impropriety of giving the question a theological or scriptural aspect. With a stolid perseverance which either will not or cannot take any other view, they are continually, and with the most self-complacent simplicity, taking for granted certain axioms of their own, which seem to us not only at war with the express declarations of the Bible on the very question in dispute, but also with certain fundamental principles which it reveals as the foundations of all law and all morality. When a defence is made against such an assault on first truths, and made, too, in the only proper way, by a direct resort to the moral sense and its Divine interpreter, we have again and again the old outcry about theological and religious bigotry, or a repetition of the stale jest, and the stale alliteration, of the gallows and the Gospel.

Are these men aware, or are they in their simplicity unconscious of the fact, that when they assert that government is only a human compact, *and nothing more;* that law is only the will of the governed, *and nothing more;* that the right of human magistrates, and human laws to punish the criminal, is ultimately derived from the express or implied consent of that criminal himself—that punishment has regard only to the reformation of the offender, or at most to the public convenience as concerned in the prevention of specific offences, and not to that higher good of society which consists in forming a sound

national conscience, and a healthy moral sense that is shocked at crime as crime, irrespective of its mere political or temporal consequences,—when they assert or imply that there is no connection between Divine and human law, and that religious sanctions of any kind, or any power derived to law from the spiritual and the invisible, are foreign and uncongenial elements in the social and political structure,—when, we say, they assert this, or, which is more common, assume as undisputed and indisputable first principles, what impliedly, yet most effectually nullifies every one of the above positions—are they, or are they not aware, that they are encroaching upon the religious and theological boundaries, and that unavoidably, and from the very nature of the discussion, they themselves are first entering upon that domain which they would so clamorously interdict to others as forbidden ground? The fact is, that none but the narrowest minds, rendered still more narrow by habitual converse with the most superficial system of an utilitarian and sensual philosophy, would ever even dream of discussing such a question as this, or any other important question of political philosophy, aside from its moral, religious, and theological bearings.

CHAPTER II.

NATURE AND ORIGIN OF THE RIGHT TO PUNISH.—TRUE IDEAS OF PUNISHMENT, GOVERNMENT, LAW, PENALTY, &c. —HOW FAR AND IN WHAT SENSE LAW AND GOVERNMENT MAY BE SAID TO BE DEPENDENT ON THE CONSENT OF THE GOVERNED.

One of the most common arguments of this school of philosophers is, that government is a *compact*, deriving *all* its powers, and not only this, *but all* the sanctions of its powers, from the consent of the governed. Hence, in following out this plausible theory, they proceed to assert, that the right to restrain from crime is ultimately to be traced to the criminal himself, who is supposed to surrender to society the right to punish him for the violation of those conditions, on which he derived a title to the benefits and protection of its laws. But a man, say they, has no right to take his own life. He cannot, therefore, surrender this right to society. It follows, then, that all laws which require the murderer to be put to death are violations of inalienable rights, and of the principles which must lie at the foundation of the social compact. We do not intend to dwell at length upon this ingenious theory. A direct and *à priori* argument against this account of the origin of the rights of gov-

ernment, or a direct demonstration of the truth and absolute necessity of some higher principle, without which law and civil polity of any kind could not exist, would require more space and time than our present limits allow. It would also interfere with the design, to render the argument as plain and popular as may be consistent with a faithful maintaining of just principles and fundamental truths, against the shallow political philosophy and political ethics of the day.

It is sufficient for our present purpose to apply at once to this theory the *reductio ad absurdum*. No man, they say, has a *right* to take his own life. Granted. We hail the position as recognising a ground of law and right higher than human wills, whether individual or aggregate. On the same principle, however, no man has a right to imprison himself for life—no, not for a day. God, society, family, friends, the higher wants of his own soul, claim the unrestrained exercise of all his faculties, in the constant discharge of right and duty. He has, therefore, no right to imprison himself for an hour, and, *à fortiori*, cannot surrender to society a right to confine him in a solitary dungeon; or to impose upon him any less irksome restraint, during the whole or any part of his earthly existence. The argument, we say, proves too much, and therefore proves itself false and absurd, unless we make the premises wide enough to let in all the theories of the no-government men. We must, therefore, admit this as the inevitable result, or look elsewhere for the ground and origin of law, and of the right

to punish. It cannot be found *alone* in the consent of the governed. We say *alone*, for there is doubtless a truth in the popular theory, when held in subordination to a higher principle from which it must derive sanction and stability. As matter of fact, however, such a compact and surrender of individual rights, however it may be implied in theory, never actually took place. It is a mere fiction, a romance, which has never been realized upon earth. Even in the most popular governments, legislators, in affixing to murder the penalty of death, never dreamed, that in so doing, they were acting upon the consent of the murderer, or that our state-prisons were intended for voluntary associations of men and women, serving out their time of laborious or solitary imprisonment in compliance with their original engagements with society.

When we say that law and government are derived from, or are, in some way, dependent on the popular consent, we can rationally mean no more than the truism or the fact, that men, regarded as mere masses, have the physical or muscular power to destroy government and nullify law, if the majority of the mass will to do so. So, also, may they break, if they choose, the eternal laws of an immutable morality; they may, in a certain sense, resist the laws of nature; they may, if they please, violate the known laws of God, and utterly cast off all restraint upon the most unlimited personal freedom. It is perfectly true that, in this sense, they need not be bound by any of these without their consent.

They may, if they choose, do much to animalize themselves, even if they do not wholly succeed in the experiment. They may divest themselves of the prime attributes of humanity. They may choose to take the consequences, and, in the glorious freedom of their untrammelled and *self*-determining wills, may prefer the consequences to obedience; but it would be very absurd to infer from this, that the laws of nature, and the everlasting principles of right and wrong, and even the express statutes of Almighty God, derive their sanctions and their authority from the consent of the governed. And so, it is doubtless true, that unless men consent, there can be no political government; but it would be the most inconsequential of all reasoning to conclude from hence, that the rightful power of the magistrate, the authority, the sanction, and the reason of the law, have no other or firmer basis than the popular volition, whether in the original or any subsequent state; or that the only reason why a man is bound to submit to the laws, or why they claim authority over him, is because he made or consented to them.

We find no difficulty in the admission, that, in a certain very qualified sense, government is derived from, or rather, is *dependent upon*, the consent of the governed; but then it must be *as government*, without any modification of its inherent meaning on that account. By consenting to have it, we do not change its intrinsic and fundamental nature. It must be law, as law, and punishment as punishment, without any falling away or de-

parture from the ideas inseparably connected with the terms, and sanctioned by all right use of language. Concede what we please to the popular theory, as involving a physical fact, which all wise legislators must, to some extent, take into account, and the positions are still unaffected, which maintain that human government is a delegation of the Divine, and derives its sanctions from it,—that it is not a detached scheme of temporary convenience, but a part of the vast system of a universe, of which, in all its extent, law is the very soul, the visible representative of the Omnipresent Divine authority. When a mass of men, therefore, choose (as they may choose or refuse, and this may be actual or by implied consent) to exist in a political state, or, in other words, when, in obedience to the voice of nature and of God, they agree to become the subjects of government,—then, we say, whatever may be the outward form to which they give the preference, they must take it with all its necessary and fundamental ideas. Without this, law, or that which bears the name, carries with it no right; it is but a usurpation, the rule of force, the ever-varying sense of convenience of the stronger. It has no rightful authority; it has disclaimed the only true ground of its own legitimate power; it has cut itself off from the source of its own life; it has nothing to do with the *consciences of men*. It is, in short, a most delusive counterfeit. It turns out, when closely examined, to be nothing more than that miscalled *state of nature*, from

which the advocates of such Godless theories may vainly suppose that they have made a real advance.

What, then, are the inherent and inseparable ideas belonging to the terms, *punishment*, *penal*, *penalty*, or to their counterparts in every human speech? If analysis of language may be trusted (and it should, doubtless, be regarded as the most direct inlet to those prime ethical truths, which, being coeval and coextensive with the human race, may be truly regarded as implanted by the Author of our nature), they refer primarily to the infliction of *pain* upon sin, for its intrinsic demerit, as standing by itself and irrespective of antecedents, collaterals, and consequents. We frankly admit that we attach more value to this universal etymological argument, even when its proof is found in some barbarous Chippewayan dialect, than to all the definitions of a Grotius or a Puffendorf. Pain (*poena* ποινὴ πόνος), suffering for crime as crime, is the radical idea, and this idea has no other source and no other seat than that highest and ultimate reason, the moral sense, the conscience, the voice of God in the soul of man,—even of guilty men,—affirming, as an intuitive first truth, that sin and suffering, crime and pain, πόνος and πονηρία, or transgression and penalty, in this highest and truest sense of the term, are inseparable.

Ῥέζοντά τι καὶ παθεῖν ἔοικεν,*

is the declaration of the conscience, even in pronouncing

* It is fitting that the doer (of crime) should suffer in turn.—*Pindar, Nem.* iv. 53.

sentence of self-condemnation. It is the universal instinct of humanity, and comes with equal authority, whether uttered by poet, philosopher, or legislator; by Pindar, Plato, or by Blackstone.

When these ideas are sundered, we may, if we choose, call it compact, political expediency, or political economy; but the terms government, law, penalty, are no longer applicable. Those who still retain the words in such connections do most grossly abuse language,—an offence so frequent in the present day, and so mischievous in its tendencies, that it would almost seem to deserve a place in the list of statutable misdemeanors.

CHAPTER III.

THE SUBORDINATE UTILITARIAN VIEWS OF REFORMATION AND PREVENTION ENTER INTO THE SCHEME OF GOVERNMENT, BUT EVEN THESE DERIVE ALL THEIR EFFICACY AND UTILITY FROM BEING CONNECTED WITH THE HIGHER IDEA OF RETRIBUTION.

We do not wish to be mistaken on these points. In our endeavours to exhibit, in a clear light, a great fundamental truth, we would not deny, or be even indifferent to, the importance of other considerations. We cannot contend too earnestly for the proper application of these much abused terms, above referred to, and yet, in perfect consistency with the vital principles which they set forth, it may be justly maintained, that the lower views of reformation and prevention have a most prominent and important place in the scheme of human government. They enter, undoubtedly, into the Divine legislation, yet still as subordinate. Were we compelled to regard them as forming the chief, or upper, or sole element, as some contend, what a wreck would such a theory make of all those stern views of the Divine justice, and of the grounds of the Divine law, which are so plainly revealed to us in the Scriptures, and especially as manifested in that awful remedy which it required

Almighty Wisdom to devise for the moral disorders of the world! How easily, with these premises, might a bold and consistent reasoning pass on, in its irresistible and triumphant course, until every idea of law and penalty to which the soul has been accustomed, and to which the human conscience responds, were driven from our views of the Divine administration! An instinctive perception of this, and of the truth that the fundamental ideas of law and justice must be *every where the same*, has enlisted a certain class of religionists, almost to a man, as warm and zealous parties in this discussion. It has engaged them in a warfare upon principles, which, although, apparently, at a great distance, have yet a direct bearing on the most long maintained and universally believed doctrines of the common Christian theology. The apparent remoteness of the corner from which the attack is made cannot disguise the motive, or conceal that virulence, so much beyond what would seem to be called forth by an ordinary question of political philosophy. They have sagacity to perceive, that if it can be made out that there is nothing strictly penal or retributive, nothing capital in human law,—neither is there in the Divine. Such an attempt, however, to unsettle the innate and common opinions of mankind, although attended with temporary mischief, will, we are sure, be ultimately unavailing. Our confidence in this is derived from the fact, that these ideas are too deeply seated in the human soul. We cannot be wholly dispossessed of them without ceasing to be men. Nature, or, rather, conscience,

will assert her rights, and successfully repel every effort to drive her from her citadel in the human breast, or take away that *first truth* in which resides the main element of her power over human action. One true moral conviction, coming from the penetralia of the soul, dissipates at once all the conclusions of the mere animal understanding, reasoning from the facts and premises of a shallow utilitarian philosophy.

But,—to return from an apparent digression,—we admit, then, that the ideas of reformation and prevention, form not only parts, but most important parts of the related systems of Divine and human law—only, however, as subordinate. Indeed, the very strength and efficacy of these departments are derived from this their subordinate or dependent position. It is because there is something higher from which they are suspended, or to give our metaphor a more convenient shape, something deeper on which they may be grounded, that they themselves have any sanction or stability—any true power either to *reform* or *prevent*. Those, then, who would maintain most strenuously and most consistently these utilitarian views, should themselves the more earnestly contend for those more ultimate principles, with which the former must be connected, if they are to remain undepreciated, or have any real power for good. Take away the higher and the lower sinks with it. Abandon that philosophy that speaks at once to the individual or national conscience, and the idea and standard of *reformation* must fall lower and lower, until they vanish away in utter un-

meaningness. Severed from the true idea of retribution, political and social expediency will become ever a lower, and still lower expediency, until the moral or spiritual life of society is wholly gone. The dread of sin, as sin, irrespective of its mischievous consequences,—the thought of penalty as inherently pertaining to crime, irrespective of prevention or reformation,—these are themselves essential to all true reformation, and to all effectual prevention of moral evil. The system which is destitute of them, may, perhaps, succeed in convincing the offender that he has made a mistake,—it may make a faint appeal to what it calls an "enlightened self-interest;" but it can never produce a true *re-forming* in the full sense of that most significant term, because it contains no *appeal to the conscience*. It can refer to no higher standard than an imaginary balance between public and private convenience, a standard by which the criminal had already acted—only, perhaps, through the dazzle of this enlightened self-interest, or it may be, for want of the statistical skill of a Bentham, he had committed a slight error in its application to his own conduct.

We may even, for the sake of the argument, go still farther than this. We may adopt the definitions which some political philosophers have given of law and government, as having regard, not only in a subordinate sense, but mainly, and even solely, to what they style the social good, and of punishment, as directed solely to utilitarian ends. That is,—we may admit that men, in

choosing to live under government, may choose it *solely*, because it is useful or adapted to promote the convenience of society; but then, as we have before remarked, they must take it with its fundamental nature, involving ideas of law and penalty, higher than the conception of utility, and without which even the latter cannot be secured. The question comes back—What is the highest utility—what is the truest and purest social good? Can it consist with the loss of those fundamental ideas to which we have so often referred? Is there a good superior to a sound moral sense or conscience, either in an individual or a nation; and can this be the product of the utilitarian scheme, unless it goes out of itself? Again, does not the highest utility demand something higher than itself, to secure its own permanence, and even existence? We may take a similar view of religion in its bearings upon society. Of this, too, it may be truly said, that, in reference to the social structure, and even in regard to individuals, it is desirable for its utility. But who does not see, that in order even to be useful, it must contain some higher element, and that without this higher element it cannot even *be* religion? In the same manner, without those ideas for which we have been contending, neither law, nor government, nor punishment, can truly be what their names import, or secure even the utilitarian ends for which, as some contend, they were mainly and even wholly designed. The sum of it all is this,—the highest utility, and the highest expediency, is that which leads the soul to something higher than both, and by con-

nection with which alone all schemes for the social good become either useful or expedient. Take which road we please in the argument, we come round at last to the eternal, the *absolute*, as the only resting-place, not only in religion, but also in ethical and political philosophy.

CHAPTER IV.

DIVINE AND HUMAN LAWS FROM THE SAME ULTIMATE SOURCE AND WITH THE SAME SANCTIONS. PUNISHMENT IN BOTH HAS RESPECT TO THE INTRINSIC DEMERIT OF CRIME.

ALMOST all minds having any claim to soundness would admit the above conclusions in respect to the Divine government. Without them, it may be easily seen, there cannot be any true conviction of sin; or, in other words, a true moral sense of the Divine displeasure against transgression inherently and for its own sake. In regard to earthly governments, however, it is not so readily acknowledged. There has of late years sprung up, in reference to this subject, a most shallow philosophy, which would wholly separate the human from the Divine; leaving the former to the strength of considerations drawn wholly from itself, and that, too, when viewed in its most earthly and temporary aspects. It is beginning to form a part of the creed even of the professedly religious community. Many, whose views in theology may be regarded as somewhat conservative, do yet indulge in political theories directly at war with them, and from which a most subtle adversary is preparing to undermine the very ground beneath their feet.

Where in the Bible do we find any countenance to this doctrine of divorce between moral or religious and political sanctions, or to the dogma that prevention and reformation are the sole ground of political law? From what portion of its sacred pages can there be derived any support for these theories of compacts, or of the reserve and surrender of alienable and inalienable rights, or of the authority of law being deduced solely from the consent of the governed, or of the power to punish, coming from the voluntary stipulation of the criminal? No book deals in more solemn and specific denunciations against every species of unrighteousness, and yet in what utter silence does it leave all these favorite questions of modern casuistry. It is not enough to say that these subjects did not fall within the scope of the Mosaic theocracy. Every student of the Bible must admit, not only that they are wholly left out of view as the grounds of law and government, but that they are altogether alien to the whole spirit and tenor of the Sacred Volume. Even if the truth does not resolve itself in our minds into distinct propositions, we cannot help *feeling* that there is a jarring discord, an utter want of harmony between the teachings of the Bible, and the whole spirit of the modern school to which we allude.

Notwithstanding all imperfections in the actual working and exercise of government, arising from human depravity, the Scriptures do most plainly declare it to be a Divine institution. The lawful magistrate, whatever may be the external mode of his designation, (the Bible

takes ground above all forms, and looks directly at the essences of things,) is the Minister of Heaven, and bears the sword of Divine authority. Judges are even styled *Elohim*, as standing in the place of God, and, of course, as representing no merely human justice.* Obedience to law is inculcated as obedience to God, and its violation is to be feared, not because of its inexpediency, its mischievous consequences merely,—although these may have a secondary place,—not because it is a breach of a mere human contract, but *for conscience sake*. It is true, the special national legislation recorded in the Bible has relation mainly, although not entirely, to the Jewish theocracy. Yet this, although not binding on us, perhaps, in respect to its particular details, was undoubtedly intended as a representation of those great principles, which lie at the foundation of all law and government. In this very crime of murder, for example, we would by no means insist upon the special statute of the Jewish law as binding upon us in the absence of any other declarations of the Bible, or of any other considerations drawn from other sources. We would, however, regard it as authority in regard to the ultimate principles upon which all criminal legislation must be grounded. We find, then, in the Bible, that wilful murder was to be punished, not for the reformation of the offender, nor primarily and mainly that other murders might be prevented, as a political and social inconveni-

* Compare Exodus xxi. 6, xxii. 78, with Deuteronomy xix. 17, also.

ence, but—because *the land was polluted with blood;* the national conscience was defiled; as long as the crime was unpunished the whole people were regarded as guilty before God, and there *must* be expiation, even although it might be certain that the murderer would become reformed, and no one, in time to come, should be tempted to a similar act by his impunity.

Now, in perfect consistency with this, we may admit that even in the Jewish legislation, prevention and discipline were important subordinate considerations, and that they may have even, to some extent, exerted a modifying influence in determining the respective grades of punishment. Precisely, however, in proportion to the hold the higher principle of retributive justice had upon the individual and national mind, was its reforming and preventing power, and with its loss or depreciation, sank, in the same proportion, all the strength of the lower and subordinate, though necessary aims of legislation. Stripped of their strictly penal or retributive nature, law and punishment address themselves solely to the animal understanding; they become mere estimates of inconveniences, of profit and loss, and these estimates ever flowing, varying, and sinking with those merely economical sentiments which such a philosophy tends ever to degrade to a lower and still lower standard. They have no longer any hold upon that part of man which connects him with the invisible world. *They speak not to the conscience.* Dissevered from the conscience, law, if it yet deserve the name, loses all that is

most pungent and alarming in its application to the fears. As long as it has nothing about it except the odour of expediency, it inspires in the mind of the criminal merely the hatred of a troublesome foe, instead of the salutary, reverential, moral dread of a higher and purer power, coming with religious sanctions and appealing to the *absolute* and the eternal. It addresses man as an animal; it aims simply to excite his animal fears; it appeals, not to his moral sense, but to his sense of inconvenience. It teaches him to balance one expediency against another. It instructs him to set his own limited sense of social utility against that of those more enlightened Benthamites, who have, it may be, a wider view of what they style the social good, but whose principles are, radically, as animal, as earthly, and as destitute of all true moral power, as those of their narrow-minded and transgressing disciple.

We dwell upon this, because it is this feature in the old and Biblical views of law and penalty, at which the opponents of capital punishment direct their fiercest attacks. They might take other grounds, but there is, doubtless, an instinctive feeling, that, in this point, is the main difficulty in their way. Even if government were nothing but a compact, and prevention the sole object of law, it would by no means follow, that the punishment of murder by death might not be a necessary part of legislation. The argument from expediency is most ably managed in the accompanying treatise; and as a wise expediency, most easily and naturally associates

itself with the higher principle we have been discussing, that branch of the question may easily be trusted to sustain itself, unaided from other sources, against any attack that might be made in that quarter. It is not, however, difficult to sound the motives, perhaps unconscious motives, of those who take the opposite view. If law, whilst it has a proper regard to lower considerations, must yet look to the intrinsic demerit of crime; if the human borrows this principle from the Divine, and if its very existence cannot be maintained without it; above all, if murder, or the wilful taking of life, is to be punished in the true sense of the word, that is, if it is to be visited with pain and loss corresponding to its intrinsic demerit and heinousness as crime, irrespective of consequences, or of the question whether or no the deed may draw after it other examples, by reason of its impunity —if this, we say, is felt to be a principle entering into the very nature of law itself—whether Divine or human —then there is at once an end of the question. On these premises, the human conscience or moral sense, the intuitive reason, the moral perception of right, or of the fitness of things, call it what you will, pronounces spontaneously that the *pain* of death and the *loss* of life is the natural, the appropriate, and the most righteous *poena*, τίσις, penalty, punishment, or vengeance, for the horrid crime of wilfully taking the life of a human being. To this effect all mankind have lifted up their voices, from the earliest periods of antiquity down to the present time. To this effect has been the concurrent

decision of human law, with the exception of now and then a trifling experiment of the opposite principle, too insignificant to be taken into the account. Civilized and savage have joined alike in the expression of the sentiment. The rude barbarian of the isle on which the Apostle was shipwrecked, but uttered this vox humanitatis, and echoed the ancient declaration of the Almighty. It was the moral sense that cried out within him, "*If this man is a murderer, then, although he hath escaped the perils of the sea, yet vengeance suffereth him not to live.*" In perfect harmony with this untaught child of nature, is the declaration of the most profound philosopher of antiquity. In reference to this very law, he says, that it is no statute of any one nation, or peculiar to any one code, but a universal institute, wide as the air and extensive as the light.*

Surely such a mass of testimony proves something as to the decision of the highest and most Divine faculty in the human soul, or are we yet afloat on a sea of utter scepticism in regard to some of the first principles which lie at the foundation of all ethical and political philosophy ?

This, then, we repeat it, is the grand point of attack. The question respecting the true idea involved in the

* Aristotle, Rhetoric I. xiii. It is a quotation from the old poet Empedocles. Τοῦτο γὰρ, οὐ τισὶ μὲν δίκαιον, τισὶ δὲ οὐ δίκαιον, ἀλλ' ὡς Ἐμπεδοκλῆς λέγει—

Ἀλλὰ τὸ μὲν πάντων νόμιμον, διά τ' εὐρυμέδοντος
Αἰθέρος ἠνεκέως τέταται, διά τ' ἀπλέτου αὐγῆς.

word penalty, and the connection of this idea with certain theological views respecting the true grounds of the Divine government, create the real interest of this discussion. The infliction of the punishment of death for murder, and the manner in which it is generally defended from Scripture, present this point more prominently than in any other way; and hence the eagerness with which the assault is made on this department of the law, although the principle intended to be assailed lies deep beneath every part of every system of true legislation,—at least, every system which aims at being something more than a mere contract whose validity, sanctions, expediencies, and binding force, are acknowledged to have no higher origin, and can, therefore, never rise above the temporary volitions of those who may consider themselves parties thereto.

CHAPTER V.

RETRIBUTIVE OR VINDICATIVE JUSTICE.—DISTINCTION BETWEEN VENGEANCE AND REVENGE.—INNATE FEELING OF INDIGNATION AGAINST WRONG, AND DESIRE FOR ITS PUNISHMENT.

If penalty, then, has reference primarily, if not solely, to the intrinsic demerit of crime; if the principle pervades all moral law, Divine or human, just in proportion as it is law—then we see the propriety of that much abused and misunderstood term, retributive or vindicative justice. It is that which the law, as the highest (although it may be imperfect) earthly representative of the Divine authority, *vindicates*, claims, or challenges to itself, as its peculiar prerogative, and thus *abstracts* it from that *private* exercise, in which it would be no longer *vengeance*, but *revenge*.* It is in this sense, that the

* Although these words are from the same radical, yet the difference is so striking, that it seems strange they should have ever been confounded. They agree in this, that both express a sense of, or indignation at wrong (*νέμεσις*); but one pertains to the individual, and is therefore, when attempted to be exercised, an unjustifiable usurpation; the other to the magistrate as the representative of law. As when the Psalmist says, *Avenge my cause, O Lord:* or in the prayer of the widow, *Avenge me of my adversary: Will not God avenge*

Deity, as the sole fountain of all law, declares in the Old Testament Scriptures, and repeats in the New—"*Vengeance is mine.*" How often do we find this text perverted to a sense the very opposite of that which was intended,—a sense, which, if carried out, would sweep all law from the universe, except that which was exercised by the direct, miraculous, personal act of the Deity, without the intervention in any case of any intermediate agents. Vengeance belongs to God, say some of our modern theologues, therefore human laws should not exercise it. So also justice, which is a word nearly synonymous, is claimed as his peculiar attribute, and therefore it, too, must form no ingredient in human legislation! Who can avoid seeing, that the text applies to all offences, as well as to that of murder, and thus human law is at once stripped of the power of inflicting any punishment, whether of a higher or lower degree, which has any regard to the inherent demerit of crime.

his own elect; Vengeance is mine, &c. In all these cases the word is equivalent to *justice*, or, to the *exercise of justice.*—There is but one place in the Bible in which they are confounded, and that arises from a gross mistranslation; as in Nahum i. 2, *The Lord revengeth and is furious.* Both parts of the verse are wrong. It should be—*Jehovah avengeth and is Lord of wrath*—בַּעַל חֵמָה Baal hhéma; literally, *Master, owner, rightful possessor of wrath*—that is, one who claims it as his peculiar prerogative, or as the prerogative of law, in distinction from the blind, selfish, individual will. In this sense, instead of *furious*, it means the same with the Greek expression, ἐμοὶ ἐκδίκησις—*Vengeance is mine.*

Some of our acute men of the east, starting with the anti-capital punishment principle, or some similar dogma, have carried it out to this extent, and become consistent no-government men. In the peculiar language of the sect, they have *come out* both from Church and State. They utterly deny the right of society to punish any offences against itself, because "Vengeance belongs to the Lord;" and this conclusion is in perfect consistency with those premises that regard society as a mere herding together of men and women. It flows directly from the idea of a voluntary association, which can exercise no power but such as belonged to the individual in the fancied state of nature, and which, of course, may be at any time withdrawn by the same authority that bestowed it. They rightly reject the doctrine that nature, aside from Divine institution, can give any origin or efficient sanction to government. They therefore repudiate the idea of any natural right of majorities of masses, and, since they allow no higher source or sanction, most consistently deny the legitimacy of all human law. Such a theory, however, will never be quiescent in this position. It must advance a few steps farther, and deny that there is any place for retribution, strictly so called, in the Divine government, or that it is any thing more than a police system to prevent disorder in the universe by means of certain physical laws. The moral or penal element is beginning to be utterly cast out; and thus, what commenced with the deceptive appearance of ultra conscientiousness, is fast sinking down to a denial of any

other law than nature, or, in other words, to a system, which, for all strictly *moral* purposes, can claim no advantage over atheism itself. The whole proceeds from that most shallow of all philosophies, which, spurning alike the Bible, common sense, and the almost unbroken voice of the human race, would sever all connection between the ultimate sanctions of Divine and human government, and, denying the essential element inherent in the true idea of each, would make the one a low scheme of ever sinking utilitarian expediences, and the other a system of physical means, aiming only at physical ends. Many, it is true, who adopt this philosophy, do not proceed to such extremes; but their affected and spurious conservatism only results from the fact, that they have neither the acuteness, nor the logic, nor the honesty, of the bold and consistent *come outer*.

This whole school have a peculiar antipathy to that old, well-defined, legal, and theological expression, *vindicative* or *retributive justice*. It sounds very harsh to their delicate and humane sympathies. Define it as much and as accurately as you please, they will have it that it is synonymous with revengeful, and some would even confound it with spiteful. It may be so in the common use, or rather abuse of language. In its philosophical or religious application, however, it is just the converse of the term with which it is confounded. It ever discards the idea of the personal, and has reference to law in the abstract. When exhibited in the exercises of the human soul, it has regard to that abstract indignation against

wrong, implanted by God in human nature and yet remaining in the midst of its depravity, which desires the punishment of crime for its own sake abstracted from all personal considerations, and which is pained at its impunity, even at times and under circumstances which might involve self condemnation. This indignation differs from anger in being, as its etymology implies, ever a sense of wrong, and the opposite of the feeling of indifference thereto. No man had less of passion than Aristotle. No uninspired writer ever looked more keenly into the very elements of man's moral and political nature. "We *must*," he says, (*δεῖ γὰρ*, it is a necessity of our moral being) "be pained when the wicked do not suffer, as well as when the righteous are not rewarded. Wherefore we justly ascribe this feeling of vengeance or indignation at wrong (*τὸ νεμεσᾶν*) to God."* To the same effect Socrates, in the Euthyphron—"Men," says he, "may say that an act is not wrong, (that is, they may dispute about its character) but neither God nor man would dare to say, that the wrong-doer should not suffer punishment."† It is a feeling which must be strong in proportion to the healthy condition of the soul, and of which, even the most criminal cannot wholly divest themselves. The righteous man must possess it just in proportion as he is righteous, and it must ever be

* *Δεῖ γὰρ τοῖς ἀδίκοις εὖ πράττουσι νεμεσᾶν. Διὸ καὶ τοῖς θεοῖς ἀποδίδομεν τὸ νεμεσᾶν.*—Aristot. Rhet. ii. 9.

† *Ἐπεὶ ἐκεῖνό γε δήπου, οὐδεὶς οὔτε θεῶν οὔτε ἀνθρώπων τολμᾷ λέγειν, ὡς οὐ τῷ γε ἀδικοῦντι δοτέον δίκην.*—Euthyphro.

in exact correspondence with the correlative state, namely, a love and admiration of what is right and holy, with a strong desire that all who are such, may be blessed with that *well-being* (εὖ πράττειν or εὐπραγία), which the same moral sense adjudges to be their appropriate recompense in this world, and in the world to come.

On this point we appeal with confidence to the human conscience, as simply responding to the strong language of the Scriptures—"*Say ye unto the righteous, it shall be well with him. Woe to the wicked, it shall be ill with him.*"

We have often been exceedingly interested, in observing the presence of this very feeling of vindicative justice, in those who are led by their theory, rather than their moral sense, to condemn it. It may sometimes be found in connection with the most zealous efforts for the abolition of capital punishment. In sketching such a character, we are indulging in no pictures of fancy. He may be described, generally, as one, who, from some causes connected with defects in his early education, has been led to make war upon a large portion of all long received and established opinions. To such as take a conservative view of society, and reason wholly from the old school stand point, he would seem to be utterly loose in all those fundamental principles which belong to a true political philosophy, and yet, with all this, he may have, from some cause, a sound moral constitution, challenging the esteem and respect, even of those who feel assured that he is utterly wrong and mischievous, in

almost all points that have respect to the true and lasting good of society. It may be said of such a one, that he almost invariably *feels* right, although the expression of such feeling may be often in direct opposition to his most cherished theories. On this very subject, he may go beyond almost all other men, in denying that there should be any thing strictly penal or retributive in law. No one may be more earnest in maintaining the doctrine, that criminal legislation should have reference alone to utilitarian ends, without any regard to the intrinsic demerit of transgression. He may most indignantly hold, that all indignation against crime, simply as crime, is unjustifiable, and, in short, that every other feeling is to be condemned, except that which regards the criminal as an unfortunate being, whom society has made what he is, or as an insane patient, requiring the care of the hospital or the lunatic asylum, rather than any thing which bears the appearance of vengeance or penal restraint. With all this, there are times when he is compelled to give utterance to a true expression of the moral sense, and under its dictates he indulges, perhaps unconsciously, in language utterly and fundamentally at war with his philosophy. We will suppose such a one to be connected with the public press. Let us mark our imagined representative of this school, at times when his theories are for a moment unthought of, and he has occasion to record any instance of great and atrocious crime. Observe how *indignantly* he tells the tale, when the vile seducer has made an utter wreck of virgin purity, and blasted

forever the home and the enjoyments of a once happy and loving family circle, or when the base adulterer, for the lowest sensual gratification, has forever sundered the holy family-relation, or when brutal violence has added abortion and murder to lust;—at such a time, how his true moral nature stirs within him; how warm his invocations for vengeance on the wretch; how burning the tide of indignation that is poured along, in his glowing description of the horrid deed. Who, with more power, can hold up the vile miscreant to the vindictive wrath of a justly offended and law revering community? Who, with more force of argument, can tear to pieces that wretched sophistry, which maintains, that, in respect to the first and second of these offences, government should not meddle too much with those more secret acts, that chiefly concern the parties, and are unattended with any direct personal violence, or any open breach of the peace of society? One might, at times, almost imagine it the voice of Nemesis summoning Alecto as the executioner of a just retribution. And is not this feeling right, although vindictive, and right because it is vindictive? It is a noble and elevated feeling, this indignation at wrong, for its own sake, and irrespective of all selfish and personal considerations. It is not only the opposite, but the cure of that low animal passion of personal revenge, with which some would confound it. If we have yet any remains of our primitive holy state, this is one of them; and we should cherish it as a memorial and a representative of our better nature. In its exer-

cises in the example, to which reference has been made, we recognise the man, the whole, hale, right feeling, moral man, in distinction from the mischievous theorist. When thus occupied, in one of the noblest of public duties, how would his spiritual vigour be diminished by being compelled to read a page of Godwin or Fourier. How cold would fall upon the fervid and righteous feelings, his own chilling philosophy—the frigid arithmetical calculation by which the punishment (if we may still use the term in connection with such a creed) is offset against the *inconveniences* to society, and these, too, summed up on that low scale, which is adapted to our most earthly and animal relations—for nothing of a higher nature must be, for a moment, allowed, or the whole system perishes. In such a state of righteous moral indignation, with what congeniality of feeling would he descend to the low, Bentham-like estimate of the amount of counter-inconvenience which would be *just enough* to deter the seducer, the adulterer, the procurer of abortion, the brutal, ruthless ravisher, and all other similar souls, from the commission of similar offences? How out of place, in describing such crimes, would be that heartless sentimentalism, which is ever most piteously discoursing about the poor unfortunate criminal, whom society has made? On such occasions the rhetoric of our imagined character is of a far different kind. It is no longer, then, the poor insane, driven to crime by a false social state, but "*a fiend in human shape*," or "*a demon in the disguise of a man.*" He will

tell us, too, at such times, that "his blood boils," and that "the blood of all his hearers should boil," at the relation of such deeds. And he is right. He need not be ashamed of the expression, nor of the feeling which prompts it. His blood was made to boil on just such occasions. It is one of the final *moral* causes for which it was created, as well as to receive oxygen from the lungs, or to carry on a healthful *physical* circulation throughout the system. It is a right feeling, consistent with the purest Christianity, and deriving all its strength, and all its purity, from its connection with that very doctrine which annihilates all feelings of personal hatred and *revenge*, by leading the soul to the contemplation of the high and righteous principle of the vengeance or retribution of law, abstracted from all individual considerations, and looking to the inherent demerit of crime. Just as certain, however, as this feeling is right, must the opposing philosophy be not only unsound, but pernicious.

CHAPTER VI.

DOCTRINE OF RETRIBUTIVE JUSTICE IS CONSISTENT WITH THE PERSONAL FORGIVENESS OF INJURIES, AND FURNISHES THE ONLY VIEW BY WHICH LAW AND GOVERNMENT ARE RAISED ABOVE THE EXERCISE OF INDIVIDUAL REVENGE.

THIS view of the term vindicative or retributive justice, we are bold to assert, is the only one, in which the doctrine of law and government, in any sense, may be made consistent with the personal forgiveness of injuries. If we view society as only a gregarious assembly of individuals, having no other bond than a selfish interest, without the higher unity of a national conscience, and an abstract Eternal Justice,—if we regard law as nothing else than a utilitarian system of political economy, or as the mere right of the stronger majority to prevent, restrain, or punish, whatever may interfere with their convenience, we do not well see in what way the whole doctrine of political right, thus considered, can be saved against the objections of those who deny the legitimacy of all government, on the ground that it is returning evil for evil. The whole system, thus regarded, is in the lowest sense *revengeful.* It is the employment of personal violence against personal wrong,—the num-

ber of individuals banded together and engaged in this making no difference in respect to the principle. Whether it be one, or two, or few, or many, there is, in the absence of that higher idea of abstract law and abstract justice, together with the belief of something Divine on which it is founded, nothing but masses of individual wills opposed to other individual wills. It is only the right of the stronger, and their sense of what is convenient, be the standard higher or lower, which is to prevail over the weaker, and control the lower convenience of those who have made less advance in the philosophy "of an enlightened self-interest." Search the scheme as narrowly as we may, we find nothing else than the barest and most imperfect provision for the case of personal interests clashing with other personal interests. It is, therefore, in this state, we repeat it, the odious principle of personal revenge—its deformity only concealed in its being carried out by individuals acting in masses, rather than in a solitary and segregated manner. All this results from denying to law that higher principle which looks to the intrinsic demerit of crime, which takes away the idea of the personal, connects the finite with the infinite, the temporal with the Eternal, and thus links human government with the Divine—as a lower department, it is true, yet still united by one holy principle of right, with the eternal system of the universe. In such a view the idea of personal revenge has no place: the righteous innate feeling which desires the punishment of wrong receives its fullest satisfaction, whilst every thing

pertaining to individual or even social interest vanishes in the contemplation of the majesty of law.

Punishment, then, or retribution, is properly a *satisfaction*, or, according to the ancient device of justice and her scales, a restoration of a disturbed equilibrium. We might even style it a compensation, but not in the low utilitarian sense against which we have been contending. It is that which the moral sense aimed to set forth, when it gave birth to such expressions as διδόναί δίκην, *dare poenas*, and the corresponding phrases in all the languages of the globe. It is not merely a satisfaction to individuals, or even to society, viewed as an extension of the individual condition, but a satisfaction to Justice, the One Eternal Justice, that holy Δίκη who is coeval with God himself, and is so often represented by the ancient poets as sitting at the right hand of his celestial throne—that universal spirit of law, which *must* vindicate its own prerogative, demanding ever pain and loss as the inseparable compensation or penalty for wrong.*

If any deem it a sufficient answer to all this to say that it is an abstraction,—be it so. On such we would not waste the effort of a direct demonstration, difficult in

* If it be said that this would exclude forgiveness from the Divine law, let it be remembered, that such forgiveness is excluded on any sacrifice less than the life-blood of the incarnate Deity, and there will be found a confirmation, instead of a weakening of the principle. The greatest mystery in theology, and the highest truths in moral and political philosophy, find their mutual solution in the cross of Christ.

itself, and which might be, after all, above the range of their superficial Benthamism. Did our limits permit, however, we should like to press them with the argumentum ad absurdum, and ascertain, if possible, in what other way, and on what other basis, they are going to construct a true system of government, containing in itself any inherent principle of conservatism, and which would elevate men, instead of sinking with them, or, in other words, falling lower and lower in its standard of utilities, until it becomes the spasmodic volition of the mass, the lynch law of an irreligious and irrational mob ?

CHAPTER VII.

CONSIDERATION OF THE COMMON ARGUMENT, THAT THE INFLICTION OF THE PENALTY OF DEATH FOR MURDER TENDS TO INCREASE THE AMOUNT OF CRIME BY MAKING MEN REVENGEFUL.

In connection with our remarks on the use of the terms vindictive and retributive, we cannot help alluding to a very singular argument, often made use of by the opponents of capital punishment, and which, judging from the pertinacity with which they put it forth on all occasions, they must regard as unanswerable. The law, say they, which takes life for life is vindictive, that is, revengeful. This revengeful spirit is openly exhibited in every execution. The law is the standard of morality, and hence men are taught to cherish a spirit of vindictiveness, and to take life because the law does. This *very* foolish argument would not be worth noticing, were it not so frequently put forth, in a manner which indicates great confidence in its strength. We might at once apply to it the old test of folly, and show that it proves many other absurd things besides itself. The same reasoning would certainly be applicable (for degrees here is a matter of no consequence to the argument, and it is an old maxim—*de minimis non curat lex*)

to every punishment in which the criminal is put to the least inconvenience, beyond what is absolutely necessary to his safe keeping. All bodily pain, all hard and fatiguing labour, all solitary confinement, all restriction to a hard and unpleasant diet, would also, on the same principle, be revenge; the law would equally show a revengeful spirit, and the same bad lesson would be sent forth to corrupt the public morals.*

But the argument carries its absurdity on its very face. It is a bold assumption of one of the most important points in dispute. It all arises from the vulgar mistake in regard to the terms *vindictive* and *retributive*. It takes for granted that the law, in inflicting pain or death, is only the expression of individual or social revenge. This, we have shown, would be true on the narrow utilitarian hypothesis of which these reformers are so fond; and no consideration, derived from numbers, merely, could ever refine it into any thing nobler or purer. The other theory, which embraces in the ideas of law and government some higher element than can be found in the bare consideration of social convenience, is, as we have proved, the only one that escapes the charge, and, therefore, the only true one, because it does escape it.

* We leave out of view here the effect of example, for, certainly, those who maintain that the punishment of death will not deter men from murder, which is the only hypothesis on which they can pronounce it vindictive (in their sense), can never admit the necessity of any lower fear. So that they are driven to regard the safe custody of the criminal as the great end of confinement.

To one of the premises of this argument we most heartily respond. The law should, indeed, be a standard of morality. Its aim should be, not merely to deter men from specific crime, but along with this to direct their minds to eternal principles. What, then, we would ask, is the morality of that system which refuses to look at any thing beyond immediate social convenience, and, by so doing, destroys the very basis on which even this must ultimately rest,—which dissevers religion from law, and law from the conscience, whilst it punishes the criminal on grounds which ultimately resolve themselves into the mere right of force? Surely this seems to have far more of the aspect of revenge, than the doctrine of retribution, as we have stated it.

But to return to the argument against which we are contending. In this way, say the opponents of capital punishment, executions for murder have a direct tendency to make the crime more frequent. The law teaches men to be spiteful. They are seized with a mad spirit of imitation, and hence the punishment of death actually operates as a temptation to men to take the lives of their fellow-beings. We may admit, that the solemn considerations connected with the highest penalty of human laws have not all the effect that might be desired. Such is the depravity of our nature, that it is, alas, but too true, that even the dread of the gallows will not always deter men from the commission of murder. That many thousands are thus restrained we have no doubt; but we only infer the fact from those unchanging

principles of human nature which we find in ourselves, and which, we believe, exist in the soul of every man. All men, at least all sinful men, (and what proportion of the race they constitute, we leave our readers to judge,) fear death even in its mildest form. Of death by the hands of public justice all have an instinctive horror, not so much from its greater painfulness, or even the public ignominy that attends it (although this constitutes no insignificant element), as from its association with those dread ideas of law, penalty, and retribution, which nothing so strikingly presents to the conscience as the gallows or the scaffold. Imprisonment confines the thoughts to earth and earthly justice in its merest temporal relations. The execution of the highest penalty of death calls up, more than any thing else, the forgotten truth of the intimate connection between Divine and human law. It carries the soul onwards to the legislation of the universe, and to the tribunals of eternity. The laws of this world seem to meet their brethren, the laws of Hades, according to that most impressive conception of Socrates in the Crito, and it is felt, that there is an appeal not simply to the animal fears, or to our sense of inconvenience, but to those higher terrors, which are only awakened through the conscience and a proper sense of law as law, in all its awful majesty. That this higher influence is felt in the conscience, is most fully shown by the fact, that the wretched criminal is much more frequently brought to a deeper and more sincere confession of the justice of his sentence, in view

of this extreme penalty of the law, than is ever produced by those lower punishments which appeal less directly to the moral sense. There have been cases (and we have now reference to one quite recent in this city) where the condemned has been bowed down with a sense of his guilt, and has most humbly acknowledged the justice and inherent fitness of his doom, when, at the same time, every effort was made by the conductors of a mischievous press, even within the walls of his jail-yard, and on the very day of his execution, to make him out a martyr to a cruel and bloody system of legislation. No doubt this has often been the fact, where imprisonment would only have hardened him into a more deadly enemy of the law, without producing any effect upon his conscience, because in his case, (although not in those to which it is the appropriate doom) it is unattended by those thoughts of *fitness*, justice, and retribution, which the other punishment presents in all their soul-subduing power.*

* Nothing could present a more striking contrast, than the deportment of Green, who was lately executed at Troy, in the State of New York, and the manner in which the event was spoken of by one of the leading daily papers of the city. The murderer, with every appearance of sincerity, and with the deepest penitence, acknowledges the *perfect justice* of his doom. Instead of revenge, his heart is softened towards all men. He has no unkind feelings, he says, towards the witnesses, the officers of the law, the prosecutors, or the governor who refused to pardon. His last words, uttered, may we not hope, in all sincerity, and with saving faith in that Redeemer who heard the dying thief upon the cross, are,

Will any man in his senses avow the opinion, that there can be found, in these considerations, inducements and temptations to commit the crime of murder? Yet this is certainly the argument of those who endeavour to show by a parade of statistical tables, that murders are more frequent in consequence of being punished with death.

Rock of Ages, cleft for me,
Let me hide myself in thee.

The editor of the daily paper, on the other hand, is violent, angry, *vindictive*, abusive of the law, and spares no epithet by which he may bring it into public odium. In the utter folly of his angry excitement, he compares its effect to a father swearing before his children to discourage profanity, or practising lewdness before them to encourage virtue. The religious feelings of the wretched condemned criminal seem, more than any thing else, to have excited this display of vindictive passion against the law. The sentence, (and perhaps nothing else would have done so,) brought the unhappy convict to the consideration of the great atonement for sin. No doctrine is more odious than this, in the eyes of most of those who are opposed to capital punishment. Nothing exhibits in such an overpowering light, the majesty of law and of retributive justice. The feeling, however, which these philanthropists display, when they are told of the penitence of the criminal at his execution, furnishes a most instructive commentary, not only on their theology, but also on their boasted benevolence.

CHAPTER VIII.

PUBLIC EXECUTIONS, AND THE CONDUCT, IN RELATION TO THEM, OF A PORTION OF THE PUBLIC PRESS.

WHETHER public or private executions are more effectual, is a question which we are not prepared to decide. We believe the former public mode made a deeper moral impression than is generally imagined. The few positive cases of crime, committed in the very presence of death, should weigh but little against the silent effect which no testimony could reach, but which, according to all the principles of human nature, must have been produced. There are, however, circumstances connected with the stillness and solemnity of private executions, which, in the case of some minds, might make a yet deeper impression. To those who are aware of the event that is going on, the solemn thoughts, which the imagination conveys to the moral sense, may be still more impressive and abiding from the fact that they are not disturbed by any shock communicated to the outward sense. Whatever may be the truth in respect to the superior advantages of the one or the other of these modes, the argument against capital punishments, which is frequently drawn from private executions, as though

the law shunned the light, and from the reluctance of humane public officers to be engaged in the necessary though painful duty, is utterly unworthy of an answer, and beneath the consideration of every thinking man. Together with the miserable slang about the gallows and the Gospel, it is below contempt, or only to be noticed as indicating the inherent weakness of the cause in which they are employed.

Much has been said in disparagement of that feeling which draws men to witness a public execution. We do not intend to defend it farther than to say, that it seems capable of being resolved into that love of excitement, or what some would style "*thrilling interest,*" which is a part of our common nature, possessed alike by those who condemn, as well as those who gratify it. We do not think that, in itself, it betokens any innate cruelty of disposition. No doubt, the best of men might confess to a secret and strong desire to have witnessed, from some place of safety, the earthquake of Lisbon, or the burning of Moscow, or the battle of Waterloo,—each presenting a thousand-fold more horrors than any public execution, —whilst at the same time, they may be conscious that they would have done all in their power, even at the risk of their lives, to have prevented or relieved the tremendous sufferings connected with these terrible events. This love of excitement, like every other department of our fallen nature, requires constant watchfulness; and when it would lead us to desire the spectacle of a public execution for its own sake, a good man would, doubt-

less, keep it under restraint; and yet we believe that no editors do more to encourage an unnatural excitement, or minister more to this "*love of the thrilling*," to use one of their own choice phrases, than those who are loudest in declaiming against capital punishment on this very account. How fond are they of giving to their readers long letters from Paris, containing high-wrought pictures of public executions, detailed in all their minutiæ, and with as much keenness as though they had sharpened their pens on the very edge of the guillotine itself—the narrator, too, professing, throughout, his disgust at the crowds of people assembled to witness a scene, which he reluctantly visits for the sake of his far-distant correspondents. It is for this purpose, too, the reporters of these newspapers must ever be on the ground among the privileged few, to feast their eyes with the sight, that they may be the better prepared to lay it before their gloating readers. And then, when they have performed their part with more than surgical accuracy, when they have taxed their powers of description in setting out the robes of death, the pallid countenance, the trembling limbs, and the last quivering convulsions of the expiring man — above all, when they have found so rich a windfall as the breaking of a rope (as was lately the case in Illinois) and the "thrilling horror" of the crowd at the necessary repetition of the painful process—oh, it is sickening, it is something deserving a worse epithet than mawkish sensibility—it is nothing less than the most revolting hypocrisy, when

they proceed, at the close of the picture, to moralize on the evils of public executions, and to express their disgust at those of their fellow-beings who are led by the same love of "the thrilling," but had not the editors' or reporters' claim to be there. No doubt this strong excitement of the imagination, in which there is presented all that is dramatic, whilst there is kept back, as tame and uninteresting, whatever is really warning and solemnizing in the spectacle, has a far worse influence on the moral feelings, than the reality, without any of its salutary effects. We cannot avoid being struck with this shameful inconsistency in one who, perhaps, ranks yet as the most popular novelist of the age. No man indulges in more of this mischievous sentimentalism than Dickens. He seldom omits an opportunity to give a thrust at the "barbarous and inhuman practice of punishment by death;" and yet how he gloats over the luscious feast when he gets an occasion (and he not unfrequently goes far out of his way to obtain them) of dwelling, in the most minute and soul-sickening detail, on all the mere animal horrors which his fertile imagination can present as belonging to a public execution. In the same manner, and on the same principle, too, none more ready than he to caricature, as canting hypocrites, those, who, in a spirit of truth, and soberness, and christian compassion, believe in the doctrines of the fall and of human depravity; and yet no writer seems to take a more riotous and luxuriating delight, when he has an opportunity to exercise his powers of description on scenes not mere-

ly of ordinary crime, but of the most unnatural and revolting wickedness,—as though he possessed an instinctive feeling, that such descriptions must be most congenial to the tastes of the loudest applauders of his religious caricatures, and best adapted to that peculiar pictorial skill, on which he seems most especially to pride himself.

CHAPTER IX.

EFFECT OF THE PUNISHMENT OF DEATH ON THE PUBLIC MIND IN DETERRING MEN FROM CRIME.—EDUCATING POWER OF LAW.

We would dwell longer on this part of our subject, namely, the effect of the punishment of death on the public mind, or in deterring men from crime. It is true, it belongs to the second branch of the discussion upon which we have not formally entered. We mean what is commonly called the argument from expediency. We have not, however, aimed at being very methodical; and it is a fact, that, in the proper treatment of this question, what may be called the lower and the higher considerations so blend together, and mutually shed light on each other, that, although logically distinct, they must appear, to every reflecting mind, to be actually and practically inseparable. There are higher expediences and lower expediences. There are utilities entirely above the conceptions of those who fancy that it is easy to discuss this question (if we only choose to do so,) in its lowest economical, aside from all moral and theological bearings.

If, then, we merely enquire—what effect has the pun-

ishment of death upon the minds of individuals in deterring them, in specific cases, from specific crime—we do not give the question anything like the range to which it is entitled. If, moreover, even in this limited view, we adopt statistical tables of positive crime for any period short of several generations, as our only evidence or ground of argument, we take a still more narrow view of the whole matter, and manifestly betray an ignorance of some of the most important items that should enter into the estimate. Besides the direct and *specific* effects upon individual minds in individual cases, there must be taken into the account another thing, that some may imagine is sufficiently disposed of by calling it an abstraction, but which is, notwithstanding, a reality of the highest importance. We mean what we have styled the *national conscience*, that national moral sense or true public sentiment—that tone of feeling, which is not so much the arithmetical sum of individual sentiments, as the abstract expression of those influences which control the individual sentiment, and go to make it what it is. If it is an abstraction, it is nevertheless productive of very real and substantial effects for good or evil. It both gives and takes. It derives its tone and coloring from the laws, according as they exhibit a *moral* or a mere *economical* power, and again it exerts a reverse influence upon the jurisprudence of the country, sharing in and contributing to its degeneracy, acting and reacting, rising and falling, according to the elevating or debasing tendency of its principles. It is an invisible influence

that must diffuse itself through all departments of the government or public mind in its various legitimate expressions. It is a spiritual atmosphere that surrounds the representative in the halls of legislation, and the judge upon the bench. The law will always be better than the people. The abstract moral sense exhibited in the statute-book, or in the reports of the decisions of the judiciary, will ever be in advance of the popular moral sense, although this latter is continually controlled and shaped by it. How exceedingly deficient, then, is that view which does not take into the account this influence so potent for benefit or mischief, and leaves out of its estimate the effects produced, and the changes which must be wrought in the public moral sentiment or tone of feeling, according as law is viewed as solely economical, or in addition to this, is felt as having also a penal and retributive character. It is here that the consequences would be most likely to escape the shallow compilers of statistical tables. A change in the fundamental principles of legislation and jurisprudence, so as completely to alter their real character, might not at first be attended with such noticeable results as some far inferior modification of practical detail; but time would show, when perhaps too late, that in consequence of its decisive, though almost imperceptible action on the national conscience, a deterioration had taken place which no subsequent legislation could ever remedy.

And so in respect to individual minds, there is likewise exerted upon them a formative influence of great prin-

ciples ever symbolized in certain acts, as well as an unconscious negative restraint which never can be summed by positive arithmetical statements. And yet how little account is made of all this, in the calculations of those, who would rely upon a most imperfect experiment of some dozen years, in some petty state, as an argument for trampling under foot the common sentiment and experience of the race for sixty centuries! We refer now to what may be styled the *educating power of law*,—its effect in maintaining steadily in the mind, from boyhood, and even from infancy, the power of certain principles, which, although they may never have exerted a specific action in deterring from specific crime, have done far more in preventing the very thought of its commission from ever rising objectively to the soul. In other words, the spirit of law has so filled the mind, that it has never had room to admit even the first conception of its violation. It was this inward subjective power of positive law, which the great philosopher, lawyer, and statesman of Rome had in view, when he so boldly declared, that "he preferred the little book of the laws of the twelve tables to all the libraries of all the philosophers."*

* *Fremant omnes licet: dicam quod sentio: bibliothecas mehercule omnium philosophorum unus mihi videtur* xii. *tabularum libellus, si quis legum fontes et capita viderit, et auctoritatis pondere et utilitatis superare.*—Cicero, De Orat. i. 45. A little above, in the same connection, he assigns the reason of this preference of law to philosophy. How different is the spirit of the passage from the

We are too much in the habit of regarding law solely as it affects the more openly vicious portion of society. Many of the advocates of the abolition of capital punishment would doubtless think themselves most grossly wronged in the bare supposition, that they themselves had been kept from felonies or murder by the restraining power of the statute. This proceeds from a rejection or misapprehension of that old doctrine of human depravity, which forms so essential a part of the system of revealed truth. It is generally, with our opponents on this question, an object of most peculiar dislike. They regard it as harsh, morose, having little sympathy for man, and as indulging in most gloomy and repulsive views of God; and yet this very doctrine, when held in the heart, and not as a mere speculative tenet, furnishes the principle of more true philanthropy, and produces a more real feeling of brotherhood toward the human race, than was ever conceived of in the philosophy of a Fourier, or in all the whining sentimentalism of a Martineau or a Dickens. He whose soul is deeply imbued

negative, let alone theory, which some among us are so fond of advocating. *Ex his enim et* ***DIGNITATEM*** *maxime expetendam videmus, quum verus, justus, atque honestus labor honoribus, præmiis, splendore, decoratur; vitia autem hominum atque fraudes, damnis, ignominiis, vinculis, verberibus, exsiliis,* ***MORTE*** *mulctantur: et* ***DOCEMUR****, non infinitis concertationumque plenis disputationibus, sed* ***AUCTORITATE*** *nutuque legum, domitas habere libidines, coercere omnes cupiditates,* &c. How clearly in this last sentence does he set forth what he have styled the subjective educating power of law?

with it, regards the moral differences among men as mainly the results of providential grace, or a gracious providence acting through these very restraints of law and education. Whilst he maintains that innate sense of retributive justice which condemns crime as crime, and which demands its punishment as a dictate of the moral sense,—whilst he sees no philanthropy but Heaven's severest judgments in the loss or lowering of these stern ideas of law and penalty, he can yet say, in reference to the worst of crimes, it is of the Divine mercy, manifested in the checks of conscience and the inward formative power of positive precept by which I have been surrounded from infancy, that I am not a felon, a murderer, or an outcast from society. He acknowledges that there are, by nature, in the heart of every fallen man, the seeds of every sin, which only need the concurrence of a favoring soil to make them spring up in a rank harvest of evil deeds. He thanks God even for those human institutions, which, mingling with his *first ideas* of right, and wrong, and law, and penalty, have kept him from the first thought of crimes which he might otherwise have committed. The other doctrine professes a larger philanthropy, but it may well be doubted, whether, with all its sentimentalism, and all its disclaimers of vindictive or retributive justice, it cherishes anything like that true feeling of brotherhood towards the wretched criminal, which springs from a deeper sense of our common depravity, a deeper sense of the retributive nature of punishment, and of the restraint of law, not

only upon the openly vicious, but also upon what is styled the moral portion of the community. It is the last doctrine that would be likely to carry its advocates to the cell of the condemned, on an errand of mercy, or for any other purpose than to produce in him an opposition to the law.

In this view, then, of human nature and of the effect of law, how utterly impossible it is to arrive at any satisfactory experimental proof, from the examples of a few years, or of one generation, or even of several generations. When laws have been of long standing, centuries after their abolition may elapse, before the principles on which those laws were grounded shall wholly lose their hold upon the human soul. We do not believe that if all our criminal jurisprudence of every kind whatsoever were swept away, there would be an immediate outbreaking torrent of crime to overwhelm society. That portion which was *just* kept back before, by specific fears, might be released from all restraint; but the great mass would still have the principle and spirit of law abiding in their souls, even after the outward forms had perished. To make use of an astronomical figure, the light might still be shed down, long after the star had been removed from the firmament. The subjective, however, would in time begin to manifest its dependence upon the objective. These interior principles would at length begin to feel the want of that supply of outward moral life from which they had been fed; although, in respect to great crimes, it would, perhaps, be many years before the old associations would be lost in those souls

that had been the subjects of this silent educating power of law. To make our meaning clearer, we would say, at the hazard of a little repetition, that the statistical tables commonly employed must be regarded as having reference directly to those who are supposed to be deterred by the fear of a specific punishment, then actually before their eyes, from the commission of a specific crime, then actually meditated. Now these, we believe, after the purpose is once formed, are seldom restrained, whatever may be the penalty. Such is the deceitfulness of sin, that the soul is filled with the prospect and hope of escape, or with diabolical passions that leave no room for any prudential considerations. Let us suppose, now, the punishment of death abolished. This latter class referred to would, perhaps, for a few years, furnish about as many cases of murder as before; seeing they had already done violence, in their souls, to the spirit of law, and having passed the barrier of true moral restraint, could no longer be much affected by its continuance or removal. Through accidental circumstances, the number of homicides might even be less, but in all probability there would be no great increment, if any, until years had passed away, or even a generation of those who had been reared under these influences, so gradual and unconscious in their operation, yet so powerfully ruling in the conscience,—keeping men from the first thought of murder, because, from infancy, they had ever associated with it the stern and terrific ideas of penalty and retribution. In other words, the law had

so shed its moral and spiritual atmosphere around their souls, as to prevent the very conception of such a purpose ever arising within them. Now, these cases the reformer of our criminal code never takes into his account: they make no appearance in his statistical tables; and yet, even he himself, all moral and philanthropic as he thinks he is, may have been thus educated into an early and almost instinctive horror of shedding blood, without which he might now have been in the place of the murderer. But, remove this silent restraint, this inward formative power, by abolishing the law itself, and especially by taking away the true ideas of penalty and retribution ;—let there grow up a generation or generations (for it might even take several before the salutary efficacy of these old associations would be wholly lost) who have never had inseparably connected, in their minds, the penalty of death with the crime of taking life,—who, in fact, have never had the true idea of punishment at all, but whose souls from infancy have been under the deteriorating influence of those low views which regard law as the popular breath, crime as nothing else than a defect in the cerebral organization producing inconvenience to society, and punishment as having no other ground of right than the consent of the criminal,—let a generation, we say, or generations, grow up in such a moral, political, and religious, or rather irreligious atmosphere as this, and then would we be willing to examine statistical tables as to the results of such a system. We would do so under the fullest con-

viction, that it would be found to be a rash and wicked thing to substitute a mere experiment, founded upon a false philosophy, for the solemn statute of Almighty God in his first declaration to our race after the doom of the old world's violence, and that declaration confirmed by the almost unbroken response of humanity for six thousand years.

It is conclusive evidence of a weak cause, when inconsistent and even contradictory arguments are advanced in its support. In no case do we find this self-evident truth more fully exemplified, than in the course taken by the opponents of capital punishment. At one time, solitary imprisonment for life is declared to be a far more severe penalty, and therefore a more effectual restraint than death. Again, the latter is denounced as barbarous, inhuman, and at war with the spirit of the Gospel. Now, we are told that murders are rapidly increasing, and that this, in some unaccountable way, is owing to the punishment of death, which, by a mysterious influence, induces those to shed blood, who, otherwise, would never have been guilty of the crime; and again, it is declared, that the judicial taking of life is at war with the spirit of an age so distinguished for its refined and humanizing tendencies—an age which cherishes so sacred a regard for life, that it cannot bear a code, having once, it is true, the Almighty for its author, but only adapted to a most barbarous period, and to that most immoral, licentious, and murderous land of Judea. At one time, they say that public sentiment demands it; at

another, and after they have been sorely baffled in their appeals to legislative bodies, they are to be found loudly calling on their followers, and their trained lecturers, to labour earnestly in dispelling the thick darkness which, in reference to this subject, rests on the public mind. In some sudden fit of enthusiastic orthodoxy, they appear bitterly to lament, that the unfortunate society-made criminal should be sent to the Divine tribunal and the retributions of another world, before he has had space for repentance; whilst, now and then, on the other hand, as in an instance we have lately met with, the punishment is most severely reprobated because it releases the criminal from this painful world of probation; leaving the virtuous to remain longer in that Hell which some religionists teach us is this side the grave.

CHAPTER X.

GRADATIONS OF PUNISHMENT TO BE ESTIMATED PRIMARILY ACCORDING TO THE DOCTRINE OF RETRIBUTIVE JUSTICE OR INTRINSIC DEMERIT, ALTHOUGH AFFECTED IN A SUBORDINATE DEGREE BY OTHER CONSIDERATIONS.—HOW DERANGED BY THE ABOLITION OF CAPITAL PUNISHMENT.

From the principle that law must regard primarily the intrinsic moral guilt or demerit of crime, there results legitimately, and inevitably, the doctrine of a due gradation in affixing the appropriate retribution. We have admitted that the ideas of reformation and prevention are important, though subordinate elements. It must therefore also follow, that these, to some extent, although in a secondary and inferior degree, must modify the application of the first principle. In determining penalties some regard must be had to facility of commission, to strength of temptation, to difficulty of prevention, and the immediate inconvenience to society. If two crimes are, in other respects, equal, or adjudged to be alike as to their inherent moral turpitude, these considerations might have place in attaching to the one a severer penalty than to the other. This, however, must not be carried so far as to derange the great doctrine of moral retribution, or to obscure, in the minds of men,

the important fundamental truths on which it is founded. The healthy moral sense of any community would be shocked at any great disproportion; as when a crime, which is felt to be morally more heinous, is visited with a less penalty, on the ground of being less injurious to society, or less likely to be committed, than one of inferior moral turpitude, attended with stronger temptations, yet more marked in its direct evils to the community.

Let theorists reason as they will, the mass of mankind are governed, and we trust in God will ever continue to be governed, more by those innate feelings which the Author of their nature has implanted, than by all the statistics and utilitarian deductions of a misnamed political economy. Sometimes, it is true, nature, in this respect, is perverted, and the moral sense, in consequence, lowered from its healthy standard by means of false principles of legislation, yet still there is a conservative feeling which we believe the most corrupt system of jurisprudence cannot wholly eradicate. It is a fact, that this moral sense of the most worthy and virtuous portion of the State is now actually shocked, that seduction and adultery are unvisited by legal *vengeance*, whilst forgery, and other offences more immediately affecting the *interests* of the business or trading classes, are met with some of its severest penalties. The right-minded and right-principled are becoming aroused, because they perceive the bad effects of such legislation, in insensibly leading men, and especially young men, to regard as no crime what the law does not treat as such.

No one is louder in expressing his abhorrence of this feature of our law than, the *right-feeling* although wrong-thinking philosopher, to whom we have before alluded. And yet it is the direct result of the modern utilitarian system he has laboured so strenuously to defend, and which has already tended, in other respects, so widely, although we trust not fatally, to corrupt the public mind. These latter crimes, say some, injure no one but the immediate parties. They, besides, are secret and unattended with violence. "They pick no man's pocket, and break no man's leg;" and, therefore, our negative theorists, who hold that "government should not meddle too much" with private affairs, are for letting these offences alone, as being the most useful and least troublesome course society could pursue. How immensely, when estimated by a system of true and elevated expediencies, do the losses, in these cases, transcend all calculations of dollars and cents; and yet, incalculable as they are in their individual effects, how much do even these fall below the loss and deterioration to the moral sense of the community, when such base principles of legislation are suffered to exert, for any length of time, their pestilential influence.

To return, however, from our digression, it is yet a fact, that, notwithstanding many imperfections and many seeming exceptions, the main current of criminal legislation, in our own and all Christian countries, does yet, on the whole, proceed upon those ideas of an inherent adaptedness, in legal retribution, to the intrinsic guilt of crime,

—judged not by the standard of utility, but by the moral sense which God has implanted, as the representative of his own justice, in the human soul. It is a witness for the truth that is worth more than all the arithmetical philosophy of a Godwin or a Bentham. Now, we conceive that the modern doctrine of the abolition of capital punishment would tend, more than any thing else, to derange, and, in the end, utterly subvert this wholesome gradation of retribution, and the vitally important principles on wich it is founded. *If there is a crime which, in moral enormity, stands out beyond all others, it should have attached to it a penalty which, in the same ratio, transcends all other penalties.* There must be something *final* and highest, from which, as a standard, every other gradation must receive its due estimate. The punishment of death is the highest that can be known to human laws, and those, therefore, who would take it away, must either wholly derange all degrees of justice, or else sink, in the same proportion, all lower penalties. There would be, in one respect, the same confusion, and the same moral injury, as is produced by those legislators of the opposite extreme, who apply the punishment of death to a number of inferior offences. These, although in a contrary manner, do an equal wrong to the innate sense of righteous retribution, by raising lower crimes, acknowledged to involve a less degree of moral turpitude, to the same awful elevation. If punishment by death is abolished, imprisonment for life is the highest that remains. This is at present actually applied,

and justly applied, to some crimes of a grade inferior to murder. Now, what is to be done with these? Shall they be allowed to fall to a lower degree, or shall the conscience of the community receive a deadly injury, by being habituated to regard them as equal in enormity to murder, and, of course, murder as involving no greater guilt than they?

It may, perhaps, be said, that there may be gradations even here. There may be, for shedding blood, imprisonment for life, with a greater degree of rigour, or more painful restraint. It may be solitary and dark, and spent in the horrid and repulsive dungeon. But here, again, in these very efforts at distinction, we see the true moral nature asserting her rights. Our reformers are bringing back (perhaps without being aware of it) the idea of vindictive retribution. Here we have again the old *poena*, τιμωρία or penalty, in its true sense, although below its appropriate degree. They have no right thus, when it comes to the pinch, to abandon their utilitarian doctrine, or that principle involved in it which gives this discussion all its importance, and for the sake of which, and not on account of a superior humanity, as their published arguments most abundantly show, all this clamour is raised. Keep on your own foundation, gentlemen, if you have any foundation. The other element which might be brought into the doctrine of prevention, namely, the effect of the punishment *in terrorem*, or in deterring others, we must regard as wholly abandoned when you deny that the doom of death has any

effect in keeping men from murder, or in diminishing the frequency of its commission. The least degree of pain or suffering, then, is vindictive, and, therefore, (according to the transcendental creed of your philanthropy) unchristian and inhuman, that goes an inch beyond the necessities of safe-keeping.* In consistency with your doctrine, all prisons and all κόλασις, or restraint, must only be *in corporis custodiam*. Any, the smallest amount of labour even, beyond what may be necessary to discharge the expenses of their custody, must be interdicted, or you bring again upon the stage that old Νέμεσις,† that odious *Justitia Vindictiva*, with her antiquated sword and scales. You should be careful how you raise again the ghost of this "obsolete idea." Unless you can succeed in wholly exorcising the troubled spirit, it will make sad havoc with all your philanthropy, and involve in inextricable confusion all your parade of principle and philosophy.

* A late writer (E. P. Hurlbut, in his Essay on Human Rights) has actually assumed this very ground. In perfect consistency, too, with his system of phrenological jurisprudence, he would treat alike, that is, with mere restraint, the most deliberate and cool-blooded assassin, and the irresponsible lunatic.—Vide pages 70, 71, &c.

† Nothing presents clearer views of the moral sense of mankind than the etymology of this and kindred terms. Νόμος, Law, and Νέμεσις, Vengeance, are from the same ultimate radical. Both include the sense of *distribution*, only the former refers to the distribution of duties, the latter to the distribution of *pains* for their violation.

The conclusion, then, inevitably follows: take away capital punishment, and our whole system of criminal jurisprudence, and all its moral and reforming as well as preventive power, suffers a proportionate deterioration. Our Maker, for the highest moral purposes, has made us creatures of association. It is true that, à priori, and in every sound view of the philosophy of law, the enormity of the sin determines the penalty. Yet when the association has once been formed, it so reacts, that for the great mass of mankind, the moral feeling of abhorrence for the crime is very much influenced by the retribution by law attached to it. Abolish the punishment of death, and although the effects might slowly manifest themselves, there would not be, in succeeding generations, that instinctive horror of murder, which now exists. We do not mean among those who are just prepared for the commission of the crime, but among the comparatively virtuous and obedient portion of the community, into whose souls the purpose has never even entered, in consequence of the abiding presence of these very associations.

CHAPTER XI.

THE LEX TALIONIS.—IMPORTANCE OF THE OLD TESTAMENT AS AN INSPIRED PORTION OF GOD'S REVELATION.—INFIDEL CONTEMPT FOR THIS PART OF THE SCRIPTURES, AND THE UNDEFINED SEMI-SCEPTICAL AND SEMI-INFIDEL VIEW ENTERTAINED RESPECTING IT BY MANY IN THE CHURCH.—DISTINCTION BETWEEN THE OLD TESTAMENT AND THE NEW.

HERE, however, the opponents of capital punishment might perhaps attempt to press us with the argument from consequences. If life for life, why not an eye for an eye, a tooth for a tooth? Why not take the whole Jewish *lex talionis?* We reply, that, as a maxim of penal law, and as asserting in a concise and proverbial form the principle of retributive satisfaction, we do hold to the rule as the very essence of natural justice, even if it had not had a place in the wise legislation of the Almighty,—and that, too, for a people, who, in all the relations of domestic and municipal morality, were as good as ourselves. Any one who will examine its connection in the laws of Moses, must be satisfied, that it is laid down as a *general precept*, intended to regulate the *principle*, rather than the practical details of penal justice. That we are right in this, is evident from the fact, that

such penalties, in these precise forms, were not, in actual practice, a part of the Jewish law. *Like for like*, was the principle; but when, as in the case of lower offences, there might be equivalents, convenience and other circumstances might determine their reception, without involving any sacrifice of the righteous spirit of the maxim. For life there could be no equivalent but life, and here, accordingly, the law was carried out in the letter as well as in the spirit.

We repeat it, then, that we regard the spirit of this Jewish lex talionis as being of the very essence of right. We are not ashamed to admit, that our own feeling of vindicative justice responds most cordially to it, and in this we think that we are only manifesting the common and healthy moral sense of the human soul when unsophisticated by false philosophy, or real infidelity, under the guise of a sentimental religionism claiming to possess higher and purer notions, in regard to law and justice, than are revealed in the Holy Scriptures. Indeed, we ought to apologize for any seeming apology, when we avow ourselves among the number of those who firmly believe, that this law, so reprobated by the infidel sentimentalist, was actually uttered on Sinai by the Eternal God himself, the one sole everlasting source of all law and all right. Equally groundless is the position, that this eternal principle of justice was meant to be repealed by our Saviour in his sermon on the Mount. Those who take this ground are guilty of the same absurd reasoning which we have already several times exposed. They

prove too much. This maxim contained the very spirit of the Jewish penal law, and not only of the Jewish, but also of that of all other nations in ancient or modern times. The taking life for murder was only a part of one general system grounded on the same principle. Christ, then, according to our opponents, must have intended to denounce the whole Jewish code as wrong *in spirit*, and as a violation of the immutable principle of right. Besides the effect of this in setting one part of the Scriptures in apparent opposition to another, it would be in most notorious contrariety to our Saviour's most solemn and emphatic declaration, "that he came not to destroy the law, but to fulfil"—that is, to enforce its *spirit*, as grounded on those immutable principles of justice, which must remain as long as there are moral agents, and even when Heaven and Earth shall have passed away. It would almost seem impossible to mistake the meaning of the passages referred to, when judged in the spirit of their context. The Jews had lost the holy spirit of law. They had perverted its eternal maxims of abstract retributive justice, to the encouragement of their own individual revengeful feelings. The solemn judicial appeal to the Everliving God, which had been enjoined by his own law, and actually declared to be a mark of his own peculiar people (namely, that they swore by his name), had been by them abused to the encouragement of private and frivolous profanity. Having thus departed from the true spirit of law as the *soul of the community*, and as a divinely appointed institution, they had be-

come individualized. In our Saviour's time they acted more as mobs and *masses*, than as a nation living under the statutes of Jehovah. Each man was appropriating the law unto himself. It was in the gratification of their own personal and revengeful feelings that they said "an eye for an eye," and "a tooth for a tooth." They assumed the prerogatives of that power to which, as the Divine representative on earth, vengeance alone belonged, and it was to teach them that satisfaction was to be made, not to them, or even to the community, but to that offended justice, the preservation of the true idea of which was one of the ends for which the community was established—it was, in other words, to bring them back to the true ideas of law and penalty as the antithesis of all personal or even merely social considerations, that he said unto them, as he says unto us, "Love your enemies; bless them that curse you—resist not evil." The only question is—Did Christ mean to abolish all human government? So say the sect to which we have alluded. This class reason consistently from false premises and a false exegesis, but nothing can be more absurdly inconsistent than the course of those, who would confine this to only one department of the Jewish and Roman law, instead of extending it to all cases in which force is employed in constraint of, or in opposition to any of the evil dispositions of men.

We did not intend, in this place, to introduce the direct argument from revelation, nor would we dwell upon these texts as furnishing the main scriptural support of

our positions; but we cannot avoid expressing here, that indignation which every sound mind should feel at the flippant, irreverent, and, to give the whole truth about the matter, *infidel spirit* with which these and similar passages of the Old Testament are treated. Even many who have, doubtless, a sincere faith in the whole Bible, as a revelation from God, are yet, by these means, led to regard certain parts with suspicion, and to invent apologies for them, as though they would not bear the close examination of this enlightened age. Many of this latter class suffer their minds to remain in a sort of hazy scepticism; afraid to doubt the Divine authority of these portions of the Old Testament, because of the tremendous wreck which even their obscure vision enables them to see must thereby come upon all faith in a supernatural revelation, and yet, by reason of these aspersions, hesitating to give it that whole and hearty credence which its high claims professedly demand. They linger in this painful misty state, when all difficulty vanishes, at once, if they will only bring their minds, boldly and honestly, to the question of fact. Are these, indeed, the words of the Eternal God, and were they thus spoken at the time and on the occasion as they are recorded by Moses? This reprobated *lex talionis* has the same subscription, the same sign manual which is so frequently and solemnly attached to the statutes revealed from Sinai. It concludes with that same sublime, ANI JEHOVAH, *I am the Lord*, which is the only ground and reason that the Majesty of Heaven condescends to as-

sign to any of his laws. It professes to form a part of that same code which the Jew was required to teach dil igently to his children, as he walked by the wayside, and as he sat in his house. It constitutes a prominent portion of that collection of statutes, testimonies, and ordinances, of which the devout Psalmist, speaking, as the New Testament assures us, by the Holy Ghost, so emphatically declares,—"Thy law is very pure, therefore thy servant loveth it." It is time the question was fairly put and fearlessly answered—Was it some Gnostic Demiurgus, some revengeful being, as he is characterized by Spurzheim, who uttered these declarations, or was it the same one who said—"Love ye the stranger, the widow and the fatherless," and who tells us, even in the didactic explanations of the Jewish law*—"*If thine enemy* (that is, thy personal foe, and not the enemy of the State) *hunger, feed him; if he thirst, give him drink?*" Is it, in short, the same God who spoke in times past by the prophets, who now speaks to us through the Only Begotten, and who uttered the thunder voice on the mount of the transfiguration—"This is my beloved Son, hear ye him?" If the rejection of the inspired authority of Moses not only impugns the credibility of Apostles, but also inevitably brands as an impostor and deceiver that Son himself who claims his testimony—if at such a sacrifice, and with such a wreck of faith, we must reject those parts of the Old Testament that do not seem to square with our philosophy—then we say there should be an end of the mat-

* Proverbs xxv. 21.

ter, at least to any believing soul. Why halt ye between two opinions? If He who spake from Sinai and throughout the Old Testament, indeed be God, then follow him, without fearing, that by so doing you will ever be involved in contradictory and inconsistent principles. The merest child, who can take two consecutive steps in reasoning, may see, at once, that this half-way belief, this neologism or pretended rationalism, will never do. The end is plainly—*no Bible—no Revelation*. The New Testament cannot stand without the Old. The course, of which this is the commencement, must lead to utter darkness on all that most concerns us to know. And let no one imagine, that the mischief stops with supernatural revelation. A night, of which no one knoweth the morning, must settle down on that boasted natural religion, which has, it is true, some evidence when placed by the light of the Bible, but goes utterly out when deprived of its reflected beams. No—it is time that this and similar questions should arouse us to the great position, which, in these latter days of the world, is constantly becoming more and more evident. We must have the Scriptures of the Old and New Testament, or —nothing. We can go no more back forever to any scheme of natural religion. Its day is past. We must take the Bible, the whole Bible, the Bible in its plenary inspiration, as the voice of God to be listened to and trusted with reverent submission and a hearty faith, or —as the only alternative, that soulless atheism, that blackness of darkness, where all is chaos, where there is

no right, no rights, no wrong, no crime, no penalty, no duties, no law, no government, no state, no church, no first principles, no fundamental truths, no eternal justice, because—there is no God.

These are the tremendous consequences, and they furnish the reasons why we should so earnestly, and with our whole souls, contend against those schemes of a professedly reforming morality, that assume to be purer than the Bible, whether such assumption be direct, or implied as the necessary conclusion from certain premises. We may be sure, that in their practical applications, some universal principle is most certainly overlooked, and that, in the end, they will work far more of mischief than their partial and one-sided efforts will ever correct. Deeply are we convinced of the extreme importance of these truths, especially in view of that fearful alternative which is now all that is left for our world, and therefore, we would, without shrinking, avow the sentiment—*that no moral, social, or political evils can be so great, or productive of so much mischief, as seemingly successful attempts to remove them, by means of a false philosophy that would either supersede the Holy Scriptures, or, by irreverent palliations, and the strain of a forced exegesis, evade the power with which the Bible presses against some of its darling theories.*

We would pay no respect, then, to this squeamishness in regard to the Old Testament. We have no faith in that religion or that morality which betrays the least distrust, or is not inspired by a hearty love of this ancient

record of God's earliest revelations to our race. Aside from its inspiration, it is the honestest book that was ever written. It looks the deepest into human nature. Without any parade of philosophy, it penetrates the farthest into the fundamental principles of all moral truth. It most sublimely displays the equilibrium of the Divine character. It exhibits, in the highest, and, at the same time, the most awe-inspiring colours, the goodness and severity, the long-suffering tender mercy and the watchful jealousy, the overflowing loving-kindness and the avenging justice of God. It shows how each of these attributes is a nullity without the other, and how the love of the Holy is ever the measure of wrath for the opposite. It wars alike with that gloomy fanaticism, and that effeminate sentimentalism, which arise respectively from dwelling solely on one of these aspects of the Divine character to the total exclusion of the other. No healthy vigorous system of ethics can exist in a spirit of alienation from it, and every scheme of sickly hyper-christianity that rejects it, will be found, ultimately, wanting in those main elements of power which can alone effectually control the human conscience. Let the rationalist explain, as he best can, what may seem to him a paradox; yet he must admit the fact, that wherever the Old Testament is honoured, and children are early taught to love it, *there* will be a strong, an abiding, a conscientious and conservative morality, such as is never found among those by whom its teaching is undervalued or rejected.

All these objections to the Old Testament either proceed from the vulgar infidel spirit, or they come, in the minds of the more honest, from losing sight of its pervading idea. They have lost, or never found the key which reveals its harmony with the strictest teaching of the New. In the old revelation, the prominent ideas are those of law and authority. God speaks mainly as a law-giver and a judge. He addresses himself primarily and chiefly to nations or bodies of men. When he speaks directly to individuals, it is mainly as members of a *community*, and in reference to the duties and obligations which grow out of the relation. It inculcates the purest domestic or municipal morality,* but, along with this, not only allows but commands the duty of violent resistance to the public enemies of the nation. It teaches, by those examples at which this hyperchristianity affects to be so much shocked, to pray for their overthrow; whilst, in a spirit, as gentle as any that breathes in the Gospel, it inculcates not only the forgiveness of personal foes, but even the rendering of good for evil.† It commands the extirpation of wicked

* Let any one read carefully the Book of Deuteronomy with this idea kept prominently before him. Indeed, we do not think that there is any other part of the Bible, from which children would be likely to derive a stronger and more abiding love of right or hatred of wrong.

† It is not sufficiently borne in mind, that all the prayers of David, for the discomfiture of his enemies, are in the character of a chief magistrate, striving with foreign foes or domestic rebellion.

and idolatrous nations, and at the same time says—*Love ye the stranger*, impressing the duty on the mind by a consideration which contains the very spirit of the golden rule—"*For ye once were strangers and bondsmen in a foreign land.*"

The New Testament, on the other hand, addresses itself more especially to individual men in reference to individual duties. It aims at individual salvation. It designs to establish a spiritual kingdom which shall not abolish, but embrace in its holy principles, the inferior institutions of the family and the State. It regards law as *subjectively* reigning in the human soul, rather than as *objectively* existing in relation with the outward idea of penalty. It would seek to view men as ἔννομοι, rather than as ὑπὲρ νόμον,—as spiritually *imbued with law*, rather than as "*under law.*" But in all this, there is no clashing with the older dispensation. In the first covenant we often find declarations of the most overflowing loving-kindness and tender mercy; the second not unfrequently utters the language of the sternest and most vindictive justice. Even the mild and merciful Saviour speaks in thunder tones, and in a style which no prophet had ever dared to assume, of the doom of the wicked, and of "the wrath to come." We have no hesitation in saying, that he must indeed be a most superficial reader, who can find in the New Testament, especially if his mind reverts to the scenes of Calvary, any relaxing or lowering of those dread ideas of law and penalty, and retributive justice, that appear so prominently in the Old.

CHAPTER XII.

DID CHRIST MEAN TO ABOLISH CIVIL GOVERNMENT, OR ALL VIOLENT RESISTANCE TO EVIL?

We do not mean to go fully into the argument from Scripture, but merely to touch upon its more prominent points, and on the peculiar manner in which it is treated by the opponents of capital punishment. It is partially admitted by them, that the general doctrine of retributive justice, and that particular branch of it which requires the taking of life, is taught in the Jewish Scriptures; but they contend, that it has been repealed by Christ. On this we have already dwelt to some extent. It is sufficient here to sum up what has been previously thrown out; and this we will do by a brief statement of the whole argument. Our Saviour, then, we say, in the first place, had no special reference to the punishment of death, more than to any other part of the Jewish penal code. If he intended to interfere at all with the Jewish criminal jurisprudence, or designed any such thing as our opponents contend for, it can only be made out on the supposition, that his aim was to abolish the whole doctrine of retributive justice, which had so long existed in the world as an essential part of the criminal

law of all nations. If this be a fair inference from his language in the passages always referred to, and if it is insisted on that he speaks in reference to nations, and communities, and magistrates, and public law, as well as of private individuals, then, we say, the conclusion drawn from it by such no-government men as Burleigh and Garrison is unanswerable and irresistible. Then will *it* follow, that he meant to abolish all human law, and all violent restraint, with every inherent idea which had before been connected with government as *conducted by force*—to overturn not only the Jewish State, but to preach contempt of Cæsar, and to inculcate the doctrine, that all human polities, instead of being in any sense (as the Apostle expressly assures us) "powers ordained of God," were only, as some have said, the offspring of the Devil and of human depravity. The only question is—Did he speak at all of magistrates, states, or communities? If so, and if he intended to condemn the doctrine of strictly penal justice, as exercised by the ruler, then, *à fortiori*, did he mean to do away the idea of violent *defence* against evil, either by individuals or society? We maintain this, first, because we have shown that this doctrine of defence, or of social convenience, although admissible as a subordinate aim in government, does, in itself, involve a lower principle, more earthly, more merely human, and more nearly allied to individual revenge, than that of retribution for the intrinsic demerit of crime as demanded by the moral sense;—and, secondly, because, if either is embraced,

the former comes as clearly within the spirit, and, beyond all cavil, is more expressly contained in the letter of Christ's declarations, than the latter. *I say unto you, resist not evil.* If the precept extends at all beyond the condemnation of individual revenge, then do we say, that its next and heaviest attack must be upon that theory of government which regards the state, as nothing more than a joint stock corporation formed simply for the ends of an utilitarian expediency, and law as nothing more than the expression of the volition of a majority as to what constitutes the convenience of the mass. In reference to such a view the exegesis and application which the no-government man makes of these passages is inevitable. No combinations of human beings, whether they include a few individuals or millions (for in respect to this principle, greater or less makes no difference)—no combinations, or rather aggregations of men, we say, acknowledging no other source of right than their fancied state of nature, or natural compact, and no higher power, (as far as government is concerned,) than the will of a majority, can ever prove *their* right either to take life, or to imprison, or to do any other act implying any restraint upon the natural freedom of any person whatsoever. What men have no right to do, or are forbidden to do singly and individually,—that is, on the present hypothesis, to right themselves by violence employed against evil,—they cannot acquire a right to do by combining with one, or more, or any number of other men, unless their association professes to derive its unity

and constituting idea from some source, or standard of law and right, higher than their own wills, their own compacts, or their own sense of their own convenience; —and then, along with this, must unavoidably come, those higher ideas for which we are contending, and which can have no place in the mere utilitarian scheme. When all connection between human government and the Divine is denied,—when the former is regarded as having nothing eternal or religious in its sanctions,— when the very ideas of God, and religion, and retribution are viewed as foreign and even hostile to a sound political theory,—when thus the higher is taken away, the lower, which can only exist by its dependence, must inevitably fall. All rights grounded on no higher considerations will be found baseless in that hour of trial, when they are confronted with conscious physical strength,—when all law will be resolved into the muscular force of a majority, and all punishment into the low earthly principle of social revenge, disguised and stripped of all its more odious features on account of being exercised by masses, instead of individuals. In reference to such views we wonder not that some acute yet most mistaken minds have been led to adopt the no-government theory, and to conclude that our Saviour meant to abolish all resistance to wrong in the abolition of all human law.

But, (to return from a kind of digression into which the course of our argument often tempts us to induige,) we escape from this monstrous conclusion only by shun-

ning, in the outset, that false interpretation from which it all proceeds, and which is so often pressed by the opponents of capital punishment, without seeming to be aware of the inevitable consequences to which it leads. We have often thought, however, that there is more of infidelity than of simplicity in this mode of reasoning. With some writers of this school, the Gibbonism is too obvious to be mistaken. The desire of setting off one part of the Bible as inconsistent with another is far stronger, than any real regard for the theory in defence of which such a course is taken; and notwithstanding all their affected respect, the intention is but too manifest, to stab the sacred volume, under the disguise of the advocacy of what is imagined to be a plausible and popular doctrine. Can any other feeling than this have given rise to that otherwise most contemptible of all arguments which would even make Moses stultify himself, by representing the sixth commandment as a prohibition of capital punishment, and that too in the face of the most express declarations recorded at the same time, and professing to emanate from the same source?

CHAPTER XIII.

SKETCH OF THE ARGUMENT FROM THE OLD TESTAMENT.—FROM THE JEWISH STATUTE, AND THE PATRIARCHAL COMMAND.

THE argument from the Old Testament is of two kinds. The one is derived from the clear and undisputed provisions of the Jewish law, requiring, in all cases, the death of the wilful murderer without any compensation or equivalent. *Thou shalt take him even from my altar, saith the Lord.* It was no mere *permission*, to make it a part of their criminal code, with an alternative, if they chose to venture upon a hazardous experiment, but a positive command, accompanied with a threat of vengeance against the land, if the law was not carried into the most strict and rigorous execution. The reply to this is plausible. It was a particular law, it is said, for the Jewish nation, and suited only to particular circumstances. There is no evidence, that it was ever intended to be binding universally, any more than many other of the local statutes and ordinances peculiar to that people. We have no more to do with it than with the law which condemned a man to be stoned for picking up sticks on the Sabbath, or which inflicted death upon the adulterer, or the command to extirpate the Canaanites. It is grant-

ed that there is some force in the first of these views, and we should hesitate to rest the cause alone on these grounds, if the Bible furnished us with no other. Still, whilst admitting that, as matter of detail, the particular Jewish legislation may not *per se* be obligatory on us; yet as honestly holding to the inspiration and Divine authority of the Old Testament, and firmly believing that all "the words of the book of this law" were actually spoken by Almighty God, we must contend, that, however liable to modification in their particular application to times and circumstances, they do contain in their principles, and in their essence, the elements of eternal truth. The specific statute was made, it is true, for the Jewish people, but the reasons and sanctions assigned are for all nations, and for all times. The principles on which the law is grounded, are as immutable as the Lawgiver himself.

In its bearing, however, upon one position of our opponents, the argument from the Jewish statute must have irresistible power with all who truly reverence the Scriptures. Punishment by death is declared to be "barbarous, inhuman, opposed to the spirit of a refined and an enlightened age." It is said to be "a disgrace to our statute book." It is called "the bloody code," "the fiendish spirit of revenge." It is said to make men spiteful, revengeful, and to incite directly to the commission of the very crime it professes to be intended to prevent. Now, we care nothing, in this stage of the argument, whether it is specifically binding on us or not;

but if it was once a law of the Almighty, uttered by his own voice, and designed to be perpetual for that people whom he had chosen as his own peculiar inheritance from all the nations of the earth,—if this, we say, was once true, what else but blasphemies, impious and criminal blasphemies, can those epithets be called, by which this law is frequently characterized,—blasphemies which deserve to be punished, on the common law principle which forbids the speaking against the professed, if not established religion of the nation, or the God of that religion, or the saying or doing any thing in a reviling or calumniating manner, which may, in any way, weaken its authority over the minds of men ?* What is this, but the most downright scurrilous infidelity, or else saying that the Immutable God, whom we adore as the Eternal Fountain of all truth and all right, once gave and actually enforced upon a people the observance of a law which was cruel, barbarous, inhuman, bloody, (we keep ourselves within the epithets) opposed to the spirit of an enlightened age,—a law, the nature of which is to render men spiteful, revengeful, ferocious, and to incite them to the more frequent commission of the very crime which it was professedly intended to prevent. We will not ask the useless question, whether those who make such declarations are infidels, but is that a believing community in which their frequent repetition awakens no strong feeling of virtuous indignation and abhorrence ?

* See the decision of that great jurist, Chancellor Kent.—Johnson's Rep. The People *vs.* Ruggles.

There may be a feeble attempt to evade the force of this by saying, that the law was wise and just, as designed for a barbarous people and a barbarous age. If by this is meant, that the Jewish people were distinguished above others for the crime of murder, we challenge the proof. That they were frequently, and, at times, by express Divine command, engaged in severe and bloody wars, is undoubtedly the fact; but we doubt whether, in respect to internal domestic morality—especially during that part of their national existence in which they were under a regularly organized government,—they were surpassed by any nation of modern times. Their records, it is true, give us but little light on this point, except in those occasional incidental pictures of the simplicity of the Jewish domestic life, from which we cannot avoid strongly inferring the absence of atrocious crime. The few instances, however, which are presented, afford us a glimpse into the national conscience, and show a strong abhorrence of murder, or the atrocious crime "of shedding the blood of war in peace," and of visiting that vengeance which should be reserved for the public enemy upon a brother of the seed of Israel. Let any one compare this domestic history of the Jews with the accounts of murder of every kind, that every morning issue from our daily press, and if he is candid, he will be unable to resist the impression, that there are more cases of most wicked, wilful, and atrocious homicide committed in the United States in one year, than ever took place in Judea (in time of peace) during a

whole generation. In a very recent number of a newspaper, whose Editor is distinguished for his opposition to capital punishment, there is the following indignant, though righteous expression of feeling at the increasing enormity of crime: "*The tragic event before us suggests some pregnant reflections. Verily crime stalks rampant over the land. Murders, secret assassinations, ravishments, swell the chronicles of the day, and no one can calculate how long his personal happiness shall continue uncompromised.*" When the Editor, in the exercise of a healthy moral sense, welcomed into his columns this strong expression of indignation against a horrid case of violation and murder, he forgot for a moment, his philosophical philanthropy, his doctrine of progress, and his enlightened age. And yet, in a very few days, we find him criminally reviling the law of the land, and denouncing the execution of its highest penalty on one who had most cruelly poisoned to death a young and innocent wife within four days after their marriage, *as "a choking the breath out of a fellow-being, before the time which nature intended.*"

But, assuming this hypothesis in respect to the state of the Jewish nation, we will drive these gentlemen to the wall on the charge of infidelity, or blasphemy, or both. The reasoning lies within the narrowest compass. In the same standing argument, be it remembered, it is urged by them, that the punishment of death not only has no power to restrain from the crime (and we have admitted that it often avails little against human depravity, and

have contended that mere prevention is not the main and highest ground for its infliction), but that it has a direct tendency to stimulate men to a revengeful spirit, and to the commission of murder. The God, then, not only of Eternal Justice, but of Eternal Wisdom, made an express statute for a ferocious and barbarous people, the direct tendency of which was to render them still more ferocious, to fill them with vindictive or revengeful passions, and thus, by the natural effect of the example of the law itself,* drive them on to the commission of the

* It is wonderful with what pertinacity this absurd argument is adhered to. Whilst engaged in writing the above, the following paragraph from the paper just referred to comes under my eye. "*It DOES teach revenge for injuries.* The crowd who gathered round the place of execution, *eager for a sniff of the butchery*, were like the wolf who has just lapped blood. They had taken a striking lesson from a lofty quarter in the school of 'an eye for an eye.' Let one of them but suspect that his sister is wronged, or his wife untrue, or his friend a traitor, and his hand will instinctively grasp the knife or the pistol. The community insists on blood for blood, why should he let *his* wrongs go unpunished?" Again, in a similar strain of gross and vulgar reviling, (for which, if it could be legally done, the author deserves to be indicted under the charge of labouring to bring into contempt and abhorrence, and thus weaken in the minds of men, the highest sanctions of our highest laws), he thus proceeds —"We would rather make criminals feel, that society does not punish them from an impulse of hatred or revenge, but purely in self-defence. In this way we would hope to overcome the spirit of murder. Let those who believe in casting out devils by Beelzebub take their course, &c."

Is it possible that the author of this is so blind as not to see that

very crime it was professedly intended to prevent. We are certain of having stated their favourite position aright, and substantially in their own terms. We have

the cases mentioned by him of private revenge taken for the seduction of a sister or a wife, and which he so absurdly makes to proceed from an imitation of what he styles the revengeful spirit of the law in taking life for murder, do in fact arise from the very opposite cause,—a cause, too, which in his calmer moments, and when his mind is not deranged by his monomania on the subject of capital punishment, no man sets forth with more of power and truthful feeling. It is not because the law *does* take vengeance (not revenge) for murder, but because it *does not* take vengeance for seduction and adultery, that such cases are so common—how much more common they might be were it not for the fear of the gallows, no one can tell. The feeling of indignation against wrong is, as we have shown, a righteous emotion. It belongs to the very elements of our moral nature. We could not be men without it. Now this, to be kept pure, must be the *expression of law*, divested of the individual and the selfish. If left to struggle in the private bosom, especially if connected with personal injury, it will degenerate into the unholy feeling of revenge. Law, then, is the means of preserving the feeling, and yet preventing its deterioration. As presented in the calm and elevated proceedings of the judicial tribunal, pronouncing its sentences without passion, or with no other qualifying emotion than that of pity, it may be in alliance with the noblest and most humane feelings of our nature. We appeal to the experience of all who have suffered this sublime spectacle of the judicial sentence, this solemn decree of public justice as the representative of God and not of human passion or the mere popular volition, to have its legitimate effect upon their souls. We assert with as much confidence as those we oppose. It *does not* teach revenge. It is as far as possible from a mere "*impulse to hatred.*" It does soften and

also drawn from it the inevitable conclusion. It is very difficult to say which is the most prominent, the inconsistency and absurdity, or the horrid blasphemy of this most wretched sophism. It has no power to conceal either its logical, or its moral deformity. If these men mean to deny the inspiration of the Old Testament, and

humanize, instead of rendering ferocious. It calls out not only the stern feeling of right, but also the deep and tender emotions, in a far higher and purer degree, than all the spurious philanthropy that has ever been preached by these pseudo reformers; whilst, at the same time, the holy sentiment of justice, instead of being lowered, is elevated to a still higher standard. It is a spectacle, which, when presented with the solemnity that properly belongs to it, has often subdued the criminal himself, on whom all other means would have been powerless. The overpowering feeling of justice, and an enlightening consciousness of the inherent fitness of its sentence, has opened the fountains of his long-closed moral sense. It has softened and humbled him, when the application of the doctrine of *self-defence*, which has merely an œconomical instead of a moral power, and can make no true appeal to the *conscience*, would only have kept him the determined and embittered foe of the law's selfish restraint.

We say, then, that when this righteous feeling of indignation for wrong has its appropriate satisfaction and finds vent in the law (for vent of some kind it must have), society is comparatively free from disorder, the cases alluded to disappear, and what would otherwise be revenge, becomes purified and elevated into that sacred feeling of justice which may exist in perfect harmony with the most tender emotions of our nature. In such a state of law, the great truth breaks out with more and more clearness on the mind—*that justice is not a mere police expedient to preserve society, but that one great end of society itself is the conservation of justice, and, in that, the conservation of our moral nature.*

are willing to place themselves and their cause before the community on such a ground as this, let them take the course in all frankness. Whilst, however, they deal thus with an admitted declaration of Jehovah, let them not complain of want of charity, if every sound mind is compelled to regard them as infidels, and that, too, of the most deceptive kind—unmanly, disingenuous, dishonest infidels.

But, say these defenders of Christianity against Judaism, "would you stone a man for picking up a few sticks on Sunday?" "Would you put a man to death for adultery?" "Would you adduce, as authority, the command to extirpate the Canaanites?" To the first of these questions we briefly answer, that it refers not to a case under a general law, but to a special example of most daring opposition to the Divine command. The law of the Sabbath had just been promulgated with a solemnity corresponding to its vast importance, as a conservative element of the national life. The lightnings of Sinai had hardly ceased to flash, and its thunders to roll, when an individual is found in an open and flagrant violation of the statute. Under these circumstances, it was more truly an act of impious rebellion against the Most High, than an ordinary case of breach of law. No penalty had been affixed to the offence. Moses brings the special case before the Lord, and the offender is sentenced to death. Notwithstanding the infidel sneer with which the case is often brought forward, we acquiesce in it as the decision of Eternal Justice; but no one

who understands the example and its context, would ever cite it as a precedent for ordinary legislation. To the second of these usual questions we answer unhesitatingly in the affirmative. We *would* that our law sentenced the adulterer to death. We admire the wisdom of the Jewish legislation, that affixed this penalty, not to offences involving injury to property, as in the severe code of commercial England, but to those crimes that struck directly at *the life of society*, in the destruction of the individual life, and in the invasion of the sacred domestic and marriage relation. When requested to justify the command to destroy the inhabitants of Canaan, we ask, in turn, who buried sixty thousand human beings, including thousands of innocent children, in the earthquake at Lisbon? Who overwhelmed Pompeii and Herculaneum, or who prepared the train of causes, which inevitably led, and were designed to lead, to those events? When our flippant enquirers are ready to justify in the one case, we are prepared to explain the other.

The other and more common argument from Scripture is derived from that most solemn declaration, *made to the* whole human family directly after the departure from the ark. *At the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed.* This has been so often and so powerfully presented by the defenders of capital punishment, that we shall not dwell upon it at any length. We would simply remark, that it was given

not to a particular nation, but to the whole race then existing, and that too under circumstances of the most awfully solemn and impressive kind; when all the rest of mankind had been just swept away for those crimes by which the earth had been wholly polluted. The last declaration made respecting the old world was—"For the Earth is filled with violence," and one of the first that Jehovah uttered to man after the completion of that dreadful doom, is found in the words we have quoted. Can there be a doubt that there was intended to be, and that there is a most solemn connection between them? This is placed among other statutes, and has in itself the language of a statute, but whether a statute or a prediction, it equally conveys to every sound mind, and to every healthy conscience, that same doctrine of retributive justice, which, taking its origin from this age, has pervaded all mankind. The vengeance too, although all vengeance is the prerogative of God, was to be taken by the hands of man, and can any one in the exercise of common sense and common honesty bring himself to believe, that the declaration, whether prediction or statute, could have ever been uttered with the intention of condemning men for carrying it into effect, or of forewarning them against the practice of judicially taking the life of the murderer?

In regard to the interpretation of this passage, we will only say, that it never was questioned until quite modern times. All the ancient versions concur in giving it its simple, obvious, and only meaning. We do not wish to

go into a display of Greek and Hebrew learning on this matter, although it would require no great sacrifice of modesty to venture to enter the lists against that wonderful exhibition of philology, which is contained in certain legislative reports and certain late arguments against capital punishment. Indeed, the simplicity of the text furnishes to the scholar little or no ground for any putting forth of learning. It is so exceedingly easy—there is so little occasion for any thing like the exercise of critical acumen, unless attempted by the most shallow ignorance. With confidence we affirm, that there is hardly a text in the whole Hebrew Bible more simple in its construction, more perfectly intellegible in the use of the plainest and best known words, more free from ambiguities of every kind, and with less difficulties arising from the order and sequence of the words, than the one in question. There is but one peculiar Hebrew idiom in the passage.* This, too, is of the most common use, and has been transferred in our own version to the English. Had there been no question of this kind raised by infidel ignorance, not one Hebrew scholar out of a hundred would have ever thought of its having a meaning essentially different from that which is given to it in the ordinary version. Here too, whatever we may think of the particular Mosaic law afterward delivered, as binding upon us, there can be no doubt of its exegetical authority as an interpretation of the older ordinance.

* We allude to the phrase, *at the hand of every man*—a Hebraism equivalent to—*from every man.*

CHAPTER XIV.

UNIVERSALITY OF THE SENTIMENT AND OF THE LAW WHICH TAKES LIFE FOR MURDER.—SPURIOUS PUBLIC OPINION IN OPPOSITION.—FALSE AND DECEPTIVE METHOD OF GETTING UP SUCH SPURIOUS SENTIMENT.

It may be said, and it has been said, that this universality of interpretation, to which we last referred, has been occasioned by the universally received, yet erroneous opinions of mankind respecting retributive justice, and the punishment of the crime of murder. But whence came this universal sentiment? We ask the same question here that we have elsewhere asked respecting the doctrine of capital punishment in the Divine government, or the belief in retributive punishment after death. The human mind does not naturally love absurdity, neither does the soul love the contemplation of its own misery. Whence, then, came this doctrine of retribution *into the conscienee?* How came it so constantly, and so universally, to pervade the moral sense of the human race,—exhibiting itself in every system of religion, in every scheme of government, in every theory of law, in every language under Heaven, to such an extent, that it might almost be deemed inseparable from the moral and intellectual constitution of man? What

other origin could it have had, unless it was directly implanted by the creating power of God, or had come down by tradition as the universal echo of this ancient law, or by reason of both influences combined?

Abhorring, as we most heartily do, all demagoguism, all boasting of human perfection, and above all that specious doctrine of reverencing our individual natures, in the form in which it has sometimes been taught, still do we honour every sentiment which we find to have been universal among mankind, and which can be truly said to be *semper, ubique, et ab omnibus*. We would do it homage as the voice of God in the human soul, the declaration of that universal reason, which is the only corrector, aside from revelation, of the weakness and darkness of the individual intellect. And yet, among all the strange phenomena presented by our strange human nature, no one is more utterly astonishing, than the fact, so frequently exhibited on this and similar questions, that the very men who are the most inclined to deify the *vox populi* of the moment, or it may be, the frothy and turbid public sentiment which they themselves have stirred up from the stagnant and shallow depths of a superficial age or nation, should be the first to spurn with contempt the vox humanitatis of six thousand years. It may be that mankind have been all wrong in this matter. It may be that all laws and institutions, which have sanctioned the principle of retribution, may have been grounded on principles fundamentally false. It is barely possible, that the interpretations of the Bible by the

wise, and pious, and learned, in all ages since it was given, have been all incorrect: it may possibly be, that all languages in which this and similar terms are found, may have been, in this respect, the product of unsound views or erroneous prejudices, and that the words government, and law, and penalty, may have ever had attached to them false and inconsistent meanings: it may possibly be,—for who can assign limits to possibilities—that, in regard to that moral, political, and theological science, which the men of past generations had all the ability and all the means of investigating that belong to the present physical age, there are no first truths which should be regarded as established—admit all this as possible, and what is the inevitable conclusion? What else than that human reason, even in all its accumulated and collective strength, is exceedingly weak, and blind, and erring? What then is to be thought of the individual judgment when placed in opposition to it all? Most surely it should be *very* modest. And yet, who have more confidence in their own wisdom, than those who profess to be wiser than the Bible? Who put forth their opinions with more dogmatic obstinacy, and with more impatience of all opposition—who are more certain of the absolute infallibility of their own new-fledged philosophy, than those, who undervalue all revelation, despise all former philosophy, and affect to hold in contempt all the most long-cherished and least doubted opinions of mankind?

Even if the present public sentiment, about which so

much is said, were real, it would be far too small a thing to offset against the almost universal opinions of all past ages the other way. But it is not real. There is no such public sentiment. Any one who knows any thing of the state of parties among us, is well aware how this public opinion is managed, and what is the real worth and meaning of the word, as employed by demagogues. It is a well known fact, that, by the dextrous employment of certain means, almost any public opinion, on any kind of question, may be got up, on any occasion, and for any purpose. But in no case, perhaps, has it been more factitious and unreal than in this. The leaders in this movement are well aware of how much importance it is to them, to be able to say that the change is demanded by the voice of the community. Hence, early, and in the very commencement of their agitation, they boldly asserted that such was the fact. It is repeated by every lecturer and writer, until an impression to that effect is produced, and even those who have been most engaged in getting up the cheat, begin to be really deceived by the echo of their own voices. To use Burke's comparison, they are like the noisy grasshoppers, who, in consequence of hearing nothing but the continual din of their own chatter, fancy themselves to be the only tenants of the field. The effect upon thousands who cannot, or who will not think, is just what they design it should be. There are to be found men, every where, who are ready to give in their adhesion to this doctrine, for no other reason than because they are made to believe that public

sentiment demands it. Ask them if they are otherwise convinced. Oh no—they have not examined the argument on its merits,—they are rather inclined to the old views, but then it is too late now to decide the question in the abstract—public sentiment is the other way, and, therefore, in this republican land, they are in favour of having legislation so modified, as to conform to the irresistible expression of the vox populi. And thus these same men, unconvinced by any appeal to their reason or their better feelings, and really unchanged in any thing entitled to the name of an opinion, go to swell the tide of that very public sentiment which they profess to respect, and contribute, by their numbers, to bring the force of the same argument to bear on others equally unreasoning, drawing them, by their example, into the same wide and shallow stream.

In this way, a large portion of a community—it may be a majority—may be brought into the support of a measure, without any real conviction in its favour, and with the private judgment of most of them actually the other way. When there has been a partial success in producing this frothy ebullition, the cry is immediately raised that it is useless, and worse than useless, to have any laws upon our statute book which the public mind refuses to enforce,—a principle which, if carried out to its legitimate extent, substitutes the popular volition, for the time being, in place of law, and wholly does away the necessity and the virtue of any legislation. Laws are repealed by methods unknown to the constitution, and

we are at once that unchecked mobocracy, against which, it was vainly supposed, so many safeguards had been erected.

Juries, it is said, are every where refusing to convict of murder, and the law must be done away with, or all legislation is in danger of being brought into contempt. This last appeal has something of a conservative aspect, although founded on utter radicalism, and furnishes an argument for a somewhat better class, who could not be brought to yield to the force of other and lower considerations. They too, in turn, contribute to enlarge this current of popular sentiment, under the specious pretence of maintaining the dignity of law. As though it could possibly be any true reason for the abolition of the proper punishment for *murder*, that certain jurymen, whose intellects have been befogged and mystified by this philosophy, are willing, through their extreme conscientiousness, to commit *perjury*. We can understand how a man, as a citizen or a legislator, should, under a mistake in judgment, feel himself bound to use his best exertions to do away from our statute book the punishment of death ; but how any one, through conscientiousness, can make a solemn appeal to Almighty God, that he will render a true verdict according to evidence, and then knowingly and wilfully refuse to do any such thing is to us most incomprehensible, and we see no reason why legislation should be turned out of its proper channels, to accommodate cases which should themselves be the subjects of a criminal indictment. In nine cases out

often, too, we have no doubt that this very consistent scrupulosity has been the direct result of this new philosophy, and this false public sentiment of which it is but the repeating echo.

But what the end of all this will be, unless checked, it requires no spirit of prophecy to predict. The position, however, is one that is just fit to be assailed by the *argumentum ad absurdum*, that old battering ram which has so often been employed to demolish an *absurdum argumentum*. This doctrine in respect to capital punishment is not the only offspring of the new philosophy. It has many other legitimate children, all equally entitled to protection, and all equally clamorous for the inalienable rights of conscience. Some have been led to entertain most serious doubts respecting the righteousness of any exclusive property in land. Here, too, there should be a revision in this part of our statute book, and an accommodation to this most enlightened public sentiment, lest some of those conscientious men, who are to be found in certain anti-rent districts, should be led to commit perjury, when sitting as sworn jurors in the trial of an action of ejectment. Indeed, we have very lately been told by one who speaks with the authority of a leader in this new philosophy, that "landlords should be careful how they attempt to enforce the payment of their rents in defiance of the spirit of this age." Again, there are others who doubt the propriety and righteousness of the marriage relation. They deem it highly mischievous, that there should be mingled with this, any more

than with law in general, any idea of religious obligation. It is a mere contract, and as it has no other origin, and no other binding force than the consent of the parties, why,—they ask with an assured confidence that the question is unanswerable by those who admit their premises—should it not, at any time, by their consent be dissolved? What then should we do with the *tender consciences* of such disciples of Fourier and Owen when summoned to serve as jurors on an indictment for bigamy or adultery, on the supposition that this latter crime should ever have a place in our statute book? Some have made such rapid progress in the spirit of the age, as to deny all ownership of property, whether in land or chattels, and to regard the eighth commandment, and all laws against larceny, as directly in the way of men's inalienable rights. Others, as we have seen, have gone entirely through. They have *come out* from both Church and State. They have arrived at such a pitch of transcendental perfection, as to regard all government in the light of an infringement upon natural liberty, and a violation of the true doctrines of Christianity. Now these are no bugbears. The spirit of the age is rife with this philosophy. Some of these doctrines may be less ripe than others. Some are just in the bud; some are just expanding their petals, and some are full-blown. All are fruits of the same parent stock, children of the same family. All proceed from a denial of the same great first truths in respect to law, justice, retribution, and government. Some are most rapidly advancing in

growth, and all of them, unless soon checked, will in time put forth, to the subversion of all law and all order, the same plea of a most exquisitely tender and transcendental conscientiousness, although the word conscience itself, as well as other kindred terms, must be stricken from the new vocabulary.

CHAPTER XV.

EXAMINATION OF THE CLAIM TO A SUPERIOR HUMANITY PUT FORTH BY THE OPPONENTS OF CAPITAL PUNISHMENT.—SPECULATIVE COMPARED WITH PRACTICAL BENEVOLENCE.

THERE is one most strange feature belonging to this opposition to capital punishment, and that is its claim to the possession of a purer benevolence and a higher humanity—especially when such claim is viewed in the light of certain historical facts. If we except from the remark one most worthy denomination of Christians, who have always held the sentiment through what we must regard a mistaken interpretation of the Scriptures, and on grounds entirely distinct from what we have styled the new philosophy,—and if we also except a few dreaming enthusiasts, a very large part of those who have been clamorous on this question have been men, some of whom were engaged, even at the time of their warmest advocacy of this doctrine, in an equally warm advocacy of the most violent and revolutionary measures. Others have manifested, by their most obvious sympathies and instincts, that they would have been behind no one in such measures, had time and opportunity presented a theatre for the true exhibition of their natures. We would not thus characterize many in this movement,

although we have a right to do so on the best of grounds, were it not for their continual attempts to stigmatize as barbarous, unchristian, unfeeling, and inhuman, all who, on this question, do not feel that they ought to be more benevolent than the God of the Bible; and had we not seen some of the same men, who are too tender-hearted to bear the thought of putting the murderer to death, expressing the deepest mortification, and even resentment, when the incendiary insurrectionist failed in the midnight attempt to deluge in blood a neighbouring city.

We have admitted that some good men have been in favour of the doctrine, but this does not do away the conclusion to be derived from the fact, that it has ever been a favourite abstract speculation with radical, revolutionary characters—men who have contended, not for law and constitutional rights when invaded by arbitrary power, but for the jacobinical subversion of all law and all government. Whilst reflecting on this strange aspect of human nature, we called to mind the following passage from a historian of the highest standing: "During the continuance of that government (alluding to the worst period of the French Revolution) 900,000 men were sacrificed in La Vendée; in the colonies, 124,000 whites and 60,000 men of colour were slaughtered: 20,000 men were banished from their native country: 18,613 were guillotined. Yet this very government, that had shed such an ocean of human blood, signalized its memorable career, by bringing in a decree for the

abolition of capital punishment after a certain period." It cannot be said that this was from a conviction produced by the horrors in which they themselves had been engaged; for the law never went into effect, and some of those who had been its advocates, were subsequently parties and actors in as bloody scenes as any which had preceded. Here is a true exhibition of that heartless thing, speculative philanthropy. We have no doubt, that, in their way, these men had as much of that poor virtue, sincerity, as any of our more recent reformers.

How then, it may be asked, shall we explain the mystery; how reconcile this profession of superior humanity with the acts of many who make the claim, and the manifested instincts of others, too plain to be mistaken? We do not think it, in any of these cases, all sheer hypocrisy. It may be explained, perhaps, in two ways. There is an abstract philanthropy, which, although not wholly insincere, is really cold, selfish, and hard-hearted, just in proportion to the false glow in which it indulges in its fancied regard for being or humanity in general. It is a dry heat, possessed of no truly liquifying or softening properties. It deceives itself with sparks of its own kindling, with a fictitious warmth, which ever rises in proportion as it turns away from doing good, in the humble line of individual benevolence, to those schemes of an ultra reforming philosophy which leave no room for the genuine domestic and social feelings. This might easily be verified as matter of fact. There are, for example, in the city of New York, many hundred men daily en-

gaged in acts of individual benevolence, or in carrying into effect the plans of various charitable societies for the direct relief of the poor. There are many hundreds of such men who are thus daily exercising the most practical and self-denying kindness, diving into cellars and mounting into garrets, visiting the sick room, exposing themselves to contagion and disease, conversing with poverty in its most revolting forms, and encountering scenes of the most soul-sickening nature, in the accomplishment of the humane purpose of ascertaining the degree of destitution, of supplying the immediate wants of hunger, of relieving the pains of the sick, and, along with this, of carrying the advice and consolation of the religious tract to the victims of vice and poverty. There are, we say, hundreds, yes, many hundreds of such men in the city of New York, labouring thus earnestly in the cause of practical benevolence, unknown, and content to be unknown. The fact, however, ought to be known, and, having some means of right information in regard to the statistics of this matter, we have no hesitation in declaring, that among them will be found very few indeed, if any, of our loud and boasting reformers, very few indeed, if any, advocates of the abolition of capital punishment, very few, if any, socialists, or Fourierites, or sentimentalists of that class who are ever obtruding *upon the public* their irrepressible sympathies for suffering humanity, and ever indulging in the most self-complacent comparisons of their own exquisite philanthropy and most transcendent Christianity with

the coldness, worldliness, narrowness, and even want of faith of the professed churches of Christ. The reason is obvious. Such humble movements for the good of our fellow-beings are too obscure and on too narrow a scale. They are not sufficiently *grand*, lofty, exciting, and self-inflating, for those who are occupied with the sublime of benevolence. They furnish no opportunity to declaim about progress and the future perfectibility of the race. They have no philosophy. They ally themselves with no new Christianity. Above all—an interest in such efforts gives no occasion for that railing against the Church, without which, the philanthropy of some of our reformers would speedily die of spiritual starvation.

Another and a kindred explanation may be found in that to which we have already adverted, namely, a most secret and hearty dislike to certain first truths of Christianity, which, as they have the sagacity to perceive, or as an unconsciously working instinct leads them to feel, have a most intimate connection with the true grounds on which this question should be discussed. They know that their doctrines are utterly opposed to the entire organization of society as founded in certain views of law, which have heretofore been regarded as belonging both to the Divine and human administration of government. Hence the extreme pleasure of that puffing-up philosophy, which makes them feel that they are wiser, more refined, and more humane than the Bible, or those old systems of law and theology which the best,

and wisest, and holiest of men have ever regarded as established by revelation. We confess that we are suspicious of the fact, that the doctrine against which we contend, with all its specious claims to benevolence, and notwithstanding it possesses the sympathies of some worthy men, is such a great favourite with infidels and ultra radicals of every description. We do not wish needlessly to indulge in harsh statements, but a careful observation of facts compels us to believe that there are many warm and clamorous advocates of the doctrine, who would be among the first, on some exciting occasion when theories are forgotten, to instigate, if not to lead a furious mob to all the excesses of Lynch law, and actually to execute the miserable victim, whom their spurious philanthropy would affect to spare. Could this matter be fully tested we have not a particle of doubt as to the result. If a petition on this subject could be circulated among the men who had been known to have composed some Lynch law mob (at least after the excitement had passed away, and time had been allowed for the return of their abstract philanthropy), or among some of those assemblies which meet every Sabbath evening in our city to revile the Church and the Bible,—and if another could be presented to that large number of religious and truly benevolent persons of all denominations, who are connected with our many charitable associations, and devoting themselves to the work of real and practical benevolence—if such a case, we say, could be realized, and the two very different classes we have described be

thus placed in direct contrast, could any man of common observation and common sagacity doubt as to what would be the result? Do we not know—almost as well as though we should actually see the experiment tried—from the ranks of which of these so opposite parties, there could be obtained the most of these philanthropic petitioners for the abolition of capital punishment?

ESSAYS ON PUNISHMENT BY DEATH.

PART SECOND.

PUNISHMENT BY DEATH:

ITS

AUTHORITY AND EXPEDIENCY.

BY

GEORGE B. CHEEVER, D.D.

Τὸ καλῶς δ' ἔχον πόλει πάλαισμα
μή ποτε λῦσαι θεὸν αἰτοῦμαι.

I will never implore the Deity to slacken that avenging effort which hath the good of the state in view.

Œdipus Tyrannus, 879, 880.

INTRODUCTION.

On the Sabbath succeeding the execution of two men for piracy, in New Orleans, in the year 1820, an eloquent minister of the Gospel, Rev. Sylvester Larned, preached a sermon with reference to the solemn spectacle, on the execution of the penalty of the Divine Law. He opened his discourse with the following remarks:—

"The principle, upon which the recent execution was grounded, is one of the most impressive and imposing character. In the judicial act of hurrying two fellow-beings into eternity, we have not been looking on the infliction of revenge, we have not been viewing a sacrifice to the mere excitement of public feeling, we have not been witnessing the fate of persons too abandoned for reformation. None of this. The one single principle presiding over the necessity and the sternness of so mournful a scene has been the unbending majesty of law; of law, which knows none of the impulses of mercy, which puts away from it every sympathy with the suffering it demands. While then the laws of man evince so much severity, suppose we carry our contemplation higher, and look at the similar relation, in which all of us stand to the laws of the Godhead. Do not call this an unnatural transition to another subject. It is essentially the *same* subject. If there be any truth in the Bible, "sentence has passed upon all men to condemnation," and surely, when sentence has issued, we need

not be told that somewhere a law must exist, and that it has been violated, and that it has put forth its penalties against the transgressor..... Upon those who have had the means of knowing the Book of God's Revelation, it will enforce all its penalties, and inflict all its punishments. It will move forward to complete and rigid execution in spite of the ridicule, the neglect, and the complaints of mankind."

The view here taken, the connections opened out, and the light shed upon the subject, were most salutary and impressive. The effect produced, manifested the salutariness of the punishment of death for murder, upon a community where men are disposed, instead of endeavouring to bring contempt and odium upon the law and its penalty, to consider it in its true and proper character and relations.

We have endeavoured so to present it in these Essays. We have taken the Divine statute, and examined the light shed upon it in the whole course of the Divine revelation, together with its connections with the Divine government. We have also gone into a full discussion of the question of its expediency. We have taken up objections, and gone over the whole field of the argument. One or two minor points we have not noted, but may speak of them here.

It is argued by our opponents that the statute in Genesis is simple and merely permissive, but not an injunction. But it follows, according to this construction, that God gives to any and every man the permission to kill the murderer. Now God declares that private revenge is sinful; "avenge not yourselves, but rather give place unto wrath." And yet this constructive argument compels our opponents to the assumption that God here authorizes any and every individual to take into his own hands the avenging the crime of murder

by the death of the murderer. There is no way of avoiding this inconsistency, but by the interpretation of the statute as belonging not to private individuals, but to the magistracy. But if our opponents say that it is permissive not to individuals, but to governments, then we have, on their own concession, a complete divine sanction for this death penalty, if any government deem it expedient.

There is a remark of Schlegel in regard to the statutes in the Old Testament, which is of great weight in application to this. He observes that in the writings of Moses, whatever is meant to be a practical law is expressed with the greatest accuracy and precision. This is the case with this statute; it stands out from the context with the utmost clearness and precision, as a command. And when God says, At the hand of every man's brother will I require the life of man; if you ask how he will require it, then instantly follows the great enactment, Whoso sheddeth man's blood, by man shall his blood be shed.

It is sometimes said that in that early period there were no prisons, and therefore it was necessary to kill the murderer, because they could not keep him. What then could they do with the thief, the robber, the house-breaker? By the same reasoning they must kill him, because they had no prisons in which to keep him. We think if they could build cities, they could also build prisons. The state of society in which the Tower of Babel could be erected, was not likely to suffer for want of a jail.

If this had been the reason for this statute, certainly it would have been stated. The statute would have run thus: Whoso sheddeth man's blood, by man shall his blood be shed, because at present there are no prisons to confine him in. And

it would have been added: As soon as you are strong enough to build a jail, or to hew and transport stones of a sufficient size for a murderer's prison, then this statute must be laid aside, there being no longer any use or necessity for it. If this had been the reason for this statute, how happens it that at an after period, when there was no more deficiency in prisons than in thieves and murderers, there being abundance of both, this very same statute is re-promulgated, with the additional command that in no case whatever shall the penalty of death to the murderer be commuted, but that in every case, without fail, the murderer shall be put to death? Was this because they had no prisons?

In truth, in the case of every argument brought against this statute, and every expedient by which men would evade it, we need only turn to the reason given for it by Jehovah, and in a moment, in spite of all sophistry, its meaning is as clear as the day, its obligation is seen to be perpetual.

ESSAYS ON PUNISHMENT BY DEATH.

PART SECOND.

CHAPTER I.

THE ARGUMENT FROM SCRIPTURE.—THE ORIGINAL ORDINANCE CONSIDERED.

The argument from Scripture in favour of capital punishment, is plain and powerful. It is easy to distinguish between what is local and transitory on the one hand, and what is universal and permanent on the other. We do not resort to the former, but confine ourselves to the latter. We do not inquire concerning the social or civil regulations of the Hebrews, as if, because they possessed the divine sanction for themselves, therefore they are binding upon us; at the same time we may derive much instruction from their study. In looking carefully for the final causes of the local Mosaic enactments, we shall often have reason to admire their wisdom, when a superficial observer would set them down as capricious or unintelligible. Their thorough examination requires much research and discriminating observation; and it has come to be a common thing, for

persons who have never made the Antiquities of Christianity in any shape the object of their study, to speak of the Mosaic code as "crude, cruel, and unchristian."

Now there are four things to be remarked of this code, in its particulars.

1. The laws were not those of Moses, but of God. Jehovah himself was the Lawgiver, and Moses acted simply as his agent or minister, being in no sense himself a lawgiver, as we apply this title to men like Solon or Lycurgus. The whole code, from beginning to end, was framed by divine inspiration, and possesses the authority of the divine sanction, whether consisting of new precepts revealed for the first time from heaven, or of precepts already in existence, and permitted by the divine wisdom to stand.

2. Not one of these precepts was ever abrogated by our Saviour, but on the contrary, they were sustained and sanctioned by his own declarations and example. His own death fulfilled, and so abrogated, the Jewish dispensation; but not one of its laws was abrogated, not even of its typical and ceremonial institutes, while he was living; and as to its moral precepts, they all, as well as the final causes of them, were to endure not merely to the time of his crucifixion, when he should say, It is finished; but till heaven and earth should pass away, not one jot or tittle was to be repealed, till all should be fulfilled.

"Whosoever, therefore, shall break one of these least commandments, and shall teach men so, he shall be called the least in the kingdom of heaven; but who-

soever shall do and teach them, the same shall be called great in the kingdom of heaven."* Thus did our blessed Lord extend into the Christian dispensation, and confirm and repromulgate there,—as of perpetual obligation in that kingdom of heaven, which was to have no end,—the moral precepts of the Jewish dispensation.

3. They contain the great of law love, promulgated anew in the Gospel. It is as *really* revealed in the Mosaic precepts, as it is in our Saviour's sermon on the Mount. The spirit of courtesy, kindness, and benevolence prevailing in them is remarkable; their protection of the stranger and the poor, the fatherless and the widow; their inculcation of love to God, love to our neighbour, and kindness even to enemies, would have constituted in the Jewish nation, had they obeyed them, a bright transcript of the divine perfections. And as to their penal sanctions, a learned and judicious writer has remarked, after speaking of the offences punished capitally by the Jewish law, that "in the other penal laws of the Mosaic code, there prevails a constant spirit of mildness and equity, unequalled in any other system of jurisprudence, ancient or modern."—"The Jewish law adjusted its punishments more suitably to the real degree of moral depravity attending different species of guilt, than modern codes."†

4. They were, in that age and generation, a collec-

* Matt. v. 17–19.

† Graves on the Pentateuch. Part II., Lect. 3.

tion of superhuman wisdom, standing out in such bright contrast with the statutes of the heathen world, as to constitute a most satisfactory and conclusive demonstration of their divine original. The calmest profound study of them does entirely justify the declaration of Moses himself to his countrymen in reference to their observance: "Keep therefore and do them: for this is your wisdom and your understanding in the sight of the nations, which shall hear all these statutes, and say, Surely this great nation is a wise and understanding people. For what nation is there so great, who hath God so nigh unto them, as the Lord our God is in all things that we call upon him for? And what nation is there so great, that hath statutes and judgments so righteous, as all this law, which I set before you this day?"*

While, therefore, we do not resort to this code as the foundation or necessary support of any part of our argument, we shall have occasion to advert to it as a source of most important light in our examination of the subject. Meanwhile, the inconsiderate manner, in which proof from the Mosaic books is sometimes pronounced upon, has seemed to demand, first of all, these preceding observations.

The direct argument from Scripture commences with the ordinance against bloodshed communicated to Noah; this being the first instance of divine legislation with the punishment of death annexed as its sanction. Taken with the context, it reads thus: "And surely your blood

* Deut. iv. 6–8.

of your lives will I require; at the hand of every beast will I require it, and at the hand of man; at the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man."*

WHOSO SHEDDETH MAN'S BLOOD, BY MAN SHALL HIS BLOOD BE SHED.

The original of this passage is as follows:

שֹׁפֵךְ דַּם הָאָדָם בָּאָדָם דָּמוֹ יִשָּׁפֵךְ

literally, *Shedding man's blood, by man shall his blood be shed.* In the Septuagint translation the pronoun is distinguished, as in our English translation, *Whoso* sheddeth, &c. Ὁ ἐκχέων αἷμα ἀνθρωπου, ἀντὶ τοῦ αἵματος αὐτοῦ ἐκχυθήσεται. Our common English version is the *natural* translation of the Hebrew construction; any other translation is forced and unnatural. If the sentence were given forth from our English Bible, *Whoso sheddeth man's blood,* &c., to be translated literally into the Hebrew, the same construction would be used as is used in the original text. Our common English version is the one almost universally sanctioned; and where it is departed from, it is not to avoid the application of the passage with the penalty to the murderer, but to extend and confirm it.

Attempts have been made to neutralize the power of this ordinance, by the use of the pronoun *whatsoever* instead of *whosoever,* in the translation. We believe

* Gen. ix. 5, 6.

there is not a commentator in the world by whom this change has been proposed, as by some legislators of the present time, with the purpose of evading or altering the obvious scope and meaning of the passage. It is utterly without authority and without foundation.

Vatablus has remarked on the context of this passage,* that *to require the blood of man from the hand of man* is simply a Hebraism for expressing the extreme punishment of death to be inflicted on the murderer. It avails little, therefore, to alter the translation of the ordinance itself, where its sense has been so explicitly given in the context. The Chaldee paraphrastic interpretation of the passage is as follows: Whoso sheddeth man's blood, by man, that is, by witnesses, with the sentence of the judges, shall his blood be shed.

The German commentator Michaelis chose to render it *whatsoever* instead of whosoever, simply in order to make it include *both* man and beast, and yet his opinion has with some unfairness been quoted in such a manner as to make the unlearned reader conclude that Michaelis denies the doctrine commonly received from the passage. His translation and commentary are as follows: "*Whatsoever creature sheddeth human blood, be it man or beast, by man shall its blood in like manner be shed*, Gen. ix. 6; for according to the tenor of the preceding verse, where mention is made of beasts as well as men, and where

* Hebraismus, *Requirere sanguinem hominis de manu hominis* pro *supplicio extremo afficere aliquem qui hominem occiderit, et sanguinem ejus fuderit.* VATABLUS in Crit. Sac. in Gen. ix.

God had said that he would require the blood of man from men as well as beasts, and, as he himself declares, not immediately, but through the instrumentality of men intrusted by him with the commission of vengeance, the sixth is not to be rendered *whosoever*, but *whatsoever sheddeth man's blood*, so as to include beasts as well as men."*

The translation of Luther accords with ours: *Wer Menschen Blut vergeusst*,—Whoso sheddeth man's blood. The Latin Vulgate has the same translation, *Quicumque effuderet humanum sanguinem*. The context makes this translation as necessary as the construction.

We shall only add a short comment from one of the most eminently learned and impartial of the German commentators, E. F. C. Rosenmueller, in which he refers to the opinion expressed by Michaelis: "Because שֹׁפֵךְ is the nominative absolute, there are some persons, who would have it apply not only to men, but also to beasts, so that it may read, *whatsoever* sheddeth man's blood. But to us the commonly received opinion, which confines the application of שֹׁפֵךְ to man only, seems the best. For the sacred writer, having in the preceding verse spoken concerning punishing both man and beast for the taking away of life, repeats now in the sixth verse the ordinance concerning the punishment of homi-

* Ist der sechste vers nicht zu ubersetzen: Wer Menschenblut vergiesst, sondern, Was Menschenblut vergiesst, so dass die Thiere mit eingeschlossen sind. MICHAELIS. Commentaries on the Laws of Moses. Art. 274.

cide, on account of that superior dignity of man, concerning which the last words of this verse are spoken, viz., for in the image of God made he man."*

Were it necessary for the elucidation of this passage, a vast body of authorities might be brought forward, including the names of Selden, Hammond, Grotius, Leclerc, Calvin, Rivetus, Matthew Henry, Scott, Dr. E. Robinson, and many others. Indeed, the union of the tenor of the context with the necessity of the construction is such as fairly to forbid any other rendering in this case, than that given by our English translators. We shall therefore pass to the consideration of the circumstances in which the ordinance was promulgated.

* Rosenmueller. Scholia in Gen. ix. 6: Nobis vulgo recepta sententia qua שֹׁפֵךְ de homine duntaxat capitur, potior videtur, etc.

CHAPTER II.

ARGUMENT FROM SCRIPTURE CONTINUED.—CIRCUMSTANCES OF THE HUMAN RACE, WHEN THIS ORDINANCE WAS PROMULGATED.

THE circumstances in which Noah was placed, on taking possession of the earth after the deluge, were in some respects very similar, in others very dissimilar, to those of Adam, when just invested with the sovereignty of the creation. A formal grant was made to him as to Adam. His prerogatives were settled, and his possession confirmed, in the earth redeemed from the deluge, in a form of benediction like that which attended the first proclamation of Adam's Paradisaical empire. But there was this mighty difference :—when the earth was given to Adam, there had been no sin ; all was simplicity and peace, guilelessness and innocence, fearlessness and security. There had been no evil passions among men, no ferocity among animals, no knowledge of death, no fear of cruelty or violence. The earth brought forth abundantly, and men and animals were sweetly nourished by its fruits and vegetables. Now, there was a dreadful change. There had been sin, and death as its consequence. The ground had been cursed for man's sake, and was to yield stintedly, and with much labour, what at first it yielded freely, submissively, and abun-

dantly, of itself. There had been murder and violence on the part of man against his brother man, and savageness and ferocity in the animal creation. All these differences were to be remembered and provided for, in the terms of the new grant made to Noah and his sons, and the new covenant with him and his posterity.

Accordingly he was graciously assured against the dread which he might have felt lest such a handful of helpless beings should be destroyed from the earth by the increase and ferocity of the animals, that the deepest fear of man should be impressed upon the whole animal creation. Against the dread of another deluge, which otherwise must have filled men's souls with every storm that swept across the horizon, Noah was assured that God would not again destroy the ground for man's sake, would not again bring the waters of a flood over it; but that, while the earth remained, seed-time and harvest, cold and heat, summer and winter, day and night, should not cease. The benediction and command to be fruitful and multiply and replenish the earth was laid upon him, and the grant of animal food was made to him, in addition to the provision recorded for the sustenance of Adam. This was doubtless intended in part as a compensation for the difficulty and scantiness with which, in comparison with the luxuriance and abundance of an age of innocence, the earth yielded her fruit since the curse because of man's sins. But with this grant there came a prohibition against eating the flesh with the blood thereof, the life thereof; and the

final cause of this prohibition is exceedingly solemn and interesting, as pointing, without any doubt, to that divine atonement to be made by blood for the sins of the world; a prohibition reiterated with great solemnity in the Mosaic institutions,* and intended to impress upon the soul a prophetic sense of the sacredness of the blood of atonement. "For the life of the flesh is in the blood: and I have given it to you upon the altar, to make an atonement for your souls: for it is the blood that maketh an atonement for the soul."†

This prohibition introduces another provision in the covenant with Noah, intended to secure him and his family against the dread, which from past experience they must have entertained, lest the passions of men, which had already proved so ferocious, should break out again, in universal violence and murder. God therefore declares to Noah and his sons, as personating the whole family and race of mankind, that he would require their blood in return for the life-blood which they should shed; he would require it of every animal, and he would require it of every man; at the hand of every man's brother would he require the life of man. If any man should shed the life-blood of his brother, the blood of that man should, in return, be required of him.

Here, if God had proceeded no further, the assurance to Noah would simply have conveyed the knowledge of what the Divine Being himself would do in protecting

* Lev. xvii. 10–14; Deut. xii. 16, 23. † Lev. xvii. 11.

the peace of human society, and in avenging, by his own providence, the murder of every man by his brother man. There seems evidently to be a tacit reference to the different manner of his providence in the case of Cain, and an assurance to Noah that never again should the crime of murder be punished so slightly. In the case of Cain, when the murderer feared being killed for his crime, God made a provision against it; and from the history of Lamech afterwards, to which we shall more explicitly refer, we may suppose that this carefulness grew into a precedent, and that it was not customary in the antediluvian world to visit the crime of murder with the death of the murderer. Men indulged their passions in every sort of violence, and even the providence of God did not then insure the return of such violence upon their own heads. Now, on the other hand, God assures Noah that he would himself exact, by his own providence, the blood of every man from the man who should shed it, and would thus preserve the human family against being destroyed in its infancy.

Such is the introduction to the great declaration that follows; which declaration may fairly be considered as pointing ultimately to the existence of human government and law, and as announcing and establishing its sanctions under all the awfulness and permanence of the divine authority: WHOSO SHEDDETH MAN'S BLOOD, BY MAN SHALL HIS BLOOD BE SHED. Some of the most learned and judicious commentators are united in regarding this ordinance as a declaration that death by the hand

of the magistrate shall follow the commission of the crime of murder; and if so, then it must be considered as in fact the divine institution and sanction of the civil magistracy. We shall have occasion to revert to this point more explicitly in considering the purpose and design of the ordinance. God's argument with Noah in introducing it is this: "Fear not. The Divine Omnipotence and Avenging Justice shall protect you. In mine own overruling providence I will insure the punishment of every murderer by death. As a part of this providence I determine that in the very foundation of the human government there shall be laid, as its corner-stone, this ordinance: *Whoso sheddeth man's blood, by man shall his blood be shed.* Henceforward I ordain death by the hand of the magistrate to follow the commission of the crime of murder."

This view of the circumstances of the human race, and this general interpretation of the ordinance with its context are sustained by Michaelis in his *Commentatio Prior de Poena Homicidii.* Two things, he observes, were contained in this law given to Noah, namely, the power to proceed by capital punishment against the homicide, and the imperative obligation to use that power. God had declared that he would make inquisition for blood, and he adds that he would do it by the instrumentality of men, committing to them the right of death against the murderer. It was thus that the Divine and most benignant Legislator bound together and

strengthened the society of the first postdiluvian commonwealth.*

* Nec tamen capitis poenam ab homicidis repetendam permittebat modo, sed et imperabat lex divina. Dixerat Deus se quæsiturum sanguinem hominum, additque per homines, quibus jus necis in homicidas concedat, se id facturum, etc.—MICHAELIS, Commentatio prior de Poena Homicidii. §§ 17, 20.

CHAPTER III.

ARGUMENT FROM SCRIPTURE CONTINUED.—UNIVERSALITY AND COMPREHENSIVENESS OF THIS ORDINANCE.

THESE being the circumstances of the race, and the context of this ordinance, we proceed to deduce and establish its universality and comprehensiveness. On the face of it, this point is so clear, that it would scarcely seem to need an argument. It is a signal part of the formal benediction, law, and covenant, under which Noah, as a second father of the human race, was invested, like Adam, for his posterity, with the sovereignty of the animated creation. It is not confined to any particular family, tribe, or people; it is not a covenant with God's chosen people, so called, but with the whole human family. It is not dependent on the Mosaic institutions, derives from them no part of its authority, permanence, or sacredness, but would be just as perfect, clear, and authoritative, if they were all swept from existence. It is an ordinance as extensive and comprehensive as is the promise that while the earth continued, heat and cold, day and night, summer and winter, seed-time and harvest, should not fail. It is an ordinance just as universal for all mankind, as the permission to eat animal food; no more to be restricted to a particular people, or consid-

ered as connected merely with the after application of the Levitical law, than the declaration that the dread of man should be upon the beasts of the forest is to be considered as a promise made only to the Hebrews; no more than the declaration that the blood of man shall be required of every beast is to be considered as applying only to particular races of animals, or to animals occupying a particular portion of the earth, the land of Canaan for example. The ordinance is just as universal and comprehensive, as were to be the posterity of Noah; it was given to him for all his sons, and all their races. It is neither Jewish, nor Gentile, nor Christian; neither belonging to one dispensation nor another; but it is an ordinance of humanity and of civil society, the world over. Men might as well tell us, when we see the rainbow in the sky, that we behold no memento of God's loving-kindness after the deluge, as that, when we see this ordinance in human governments, we must not trace its obligation and authority to that primeval statute revealed to Noah.

There is a wonderful explicitness, compactness, and authority in the terms in which it is expressed: it stands forth in these respects, as prominently from the context, as the commandments on the tables of stone stood forth amidst the ceremonial law and observances. Its manner is like the imperative comprehensiveness of the command, Thou shalt have no other gods before me. Indeed, the same mode of arguing that would annihilate the general obligation of the ordinance given to Noah, would also

displace the decalogue itself from its throne of divine authority and supremacy. We believe that this enactment possesses the same rank with reference to all penal enactments, that the commandments in the decalogue possess, with reference to all moral duties. It stands at the head of the science of social and criminal jurisprudence, just as the statutes in the decalogue stand at the head of the science of Christian ethics.

Now if any man will deny the evident universality of this ordinance, it is for such an one to show proof either of its limitation or its abrogation; but this cannot be done. Where is the law, or the authority, repealing it? Will any man assert that it was binding only upon Shem and his posterity, or that in process of time it became obsolete with the other lines of Noah's posterity, and continued only with the Hebrews? If its obligation ceased at any time, or with any race, *when* did its obligation cease, and by what sign or message from God did men know it? These are questions that no man can answer. Not a trace of the abrogation of this ordinance can be found, either in the course of God's providence, or in the tenor of God's word; either in sacred or profane history; either in the Old or the New Testament. On the contrary, there are plain intimations of its continuing in force through every successive dispensation.

The reason, which we have not yet considered, given by the Divine Being for the ordinance itself, is one of the strongest arguments for its perpetual obligation: *For in the image of God made he man.* Now whether we take

this, as some have done, to signify that image of God as a governor and legislator, of which the magistracy, divinely constituted, is a representation; or, according to the more common and probable opinion, that image in the individual being, of which God speaks in the beginning; in any case it is manifest that the reason it contains is not transitory, not a matter of expediency, not limited to any age, country, or generation, but coeval and coessential with the race. It recognizes in the crime of murder, not an injury to man merely, or to society, but to God; the highest possible violation of his authority, the greatest possible insult, through his violated image; a degree of turpitude and enormity, of which the Divine Majesty requires the highest possible punishment of human law.* The reason of the ordinance appeals to the attributes of God, and to the existence of man in God's image; the obligation of the ordinance endures, as long as the reason on which it is founded; consequently, it is perpetual. As long as there are men in God's image, so long will the ordinance be in force, that whoso sheddeth man's blood, by man shall his blood be shed; for in the image of God made he man. Calvin, in his commentaries, has well

* Quum homo ad Dei imaginem sit factus, æquum est ut qui Dei imaginem violavit et destruxit, occidatur, cum Dei imagini injuriam faciens, ipsum Deum, illius auctorem, petierit.—Rosenmueller, Scholia in Gen. ix.

Imagö Dei non potest impune destrui, Deus enim ipse læditur, in imagine sua læsa; ergo ab homicidio, et destructione imaginis Dei, abstinendum est.—A. Rivetus in loc. Opera, Tom. I. p. 237.

observed, that though men are unworthy of his wonderful goodness, the Divine Being doth here reveal the grounds of his care for the sacredness of human life; and most sedulously should the doctrine of this passage be marked, that no person can injure his neighbour, but he injures God; a truth, which, if men would remember, there would be much less violence in human society.*

* Sedulo autem notanda est doctrina, neminem posse fratribus suis esse injurium, quin Deum ipsum lædat. Quæ si probe in animis nostris infixa esset, longe tardiores essemus ad inferendas injurias. Calvin in Gen. ix. Opera, Tom. I. p. 53.

CHAPTER IV.

ARGUMENT FROM SCRIPTURE CONTINUED.—THE MOSAIC STATUTES, A LUMINOUS COMMENTARY UPON THIS ORDINANCE.

THE whole Jewish code proceeds on the ground of this previous legislation. To that code we do not resort for argument; it is unnecessary; we do not rest the right or duty of capital punishment on any part of it; nevertheless, it forms a luminous commentary on the ordinance revealed to Noah. The existence of this ordinance is just as much taken for granted, as the continued authority of the permission to eat animal food; nor was there any more need of formally republishing it, than of prefixing to the decalogue the acknowledged genealogy of the Hebrews from Abraham. In the thirty-fifth chapter of Numbers, in the last five verses, there is a manifest reference to this ordinance, and reasons are given for the urgency and particularity of the divine requisitions of blood for blood, which intimate that, apart from any considerations of expediency, there is a heinousness in the crime of murder, that cannot be endured; that demands and must have present expiation in the blood of the murderer, or the land itself is so defiled that God cannot inhabit it. "Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses; but one

witness shall not testify against any person to cause him to die. Moreover, ye shall take no satisfaction for the life of a murderer, which is guilty of death; but he shall surely be put to death. So ye shall not pollute the land wherein ye are; for blood, it defileth the land: and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it. Defile not, therefore, the land which ye shall inhabit, wherein I dwell; for I the Lord dwell among the children of Israel."* Some other passages having reference to this subject in the Pentateuch we place at the bottom of the page, to be consulted at the pleasure of the reader.†

In one of these passages it is said, "If a man come presumptuously upon his neighbour, to slay him with guile, thou shalt take him from mine altar, that he may die." No refuge was to avail him. From the very altar of God, though he had fled thither, he was to be taken and "surely put to death." Again: "Thine eye shall not pity him, but thou shalt put away the guilt of innocent blood from Israel, that it may go well with thee." The tenor of these declarations, their point, explicitness, urgency and severity, would incline us to think that God had observed at that period the same unwillingness to execute the penalty of the Noachic ordinance, the same false sensibility, and the same tendency to infidelity, which at intervals prevails in society at the pres-

* Numbers xxxv. 30–34.

† Exod. xxi. 12, 13, 14. Levit. xxiv. 17. Numbers xxxv. 16, seq. Deut. xix. 10; xiii. 3.

ent day. He was resolved to extirpate this feeling, and to make the obligation to punish the guilt of innocent blood, as unqualified and peremptory as any duty in the decalogue. The same testimony as to the guilt of "innocent blood," a guilt so regarded by the Divine Being, that in no circumstances would he permit it to go unpunished by death, is borne throughout the Scriptures. It is one of the sacred proverbs, "A man that doth violence to the blood of any person shall flee to the pit; *let no man slay him.*" In revenging this guilt of bloodshed, it is declared by the prophets that "the stone shall cry out of the wall, and the beam out of the timber shall answer it."

If we are not mistaken, there was a high and solemn end, which is not distinctly noticed, in all this training of the consciences of men on this subject; in making human blood so sacred, in affixing to the human life the value of a price so inestimable. It is not improbable that all the strains of prophetical preaching on this point, and all the multiplied enactments in regard to it, and all the terrible sternness with which they were insisted on, were partly intended to prepare the mind for the grandeur and solemnity of divine truth in the atonement. God would prevent the cheapening of human life, in order that the value of the sacrifice of Christ's life might not be diminished in men's estimation. In very truth, had no law ever been promulgated annexing the penalty of death to the crime of murder, it is not too much to say that the sacrifice of Christ upon the cross would

God intended that our conceptions of the unspeakable love of Christ in laying down his own life for his enemies should not be weakened, but assisted, by our habitual associations, by the whole world's prevailing habits of thought and feeling on this subject.

We insist strongly on the sure, emphatic manner, in which God reasserts and establishes the death-penalty for murder, hedging the enactment about by so many solemn and stern provisions against its violation or neglect, that the man must be wilfully blind who can deny it. "YE SHALL TAKE NO SATISFACTION FOR THE LIFE OF A MURDERER WHICH IS GUILTY OF DEATH; BUT HE SHALL SURELY BE PUT TO DEATH." This is God's legislation; no man can deny it. It is his legislation hundreds of years after the law promulgated to the world through Noah, and it is intended to reiterate and establish the law of death for murder among the Hebrews so firmly, that there may remain no room for the shadow of a doubt in regard to the intention of the law-giver, and no possibility of evading the execution of the penalty. This reiteration of the law by the Divine Being, is an insurmountable obstacle against the reasonings of those men, who endeavour to deny that at first, when God declared that men should be put to death for murder, he meant any such thing. Will any one have the hardihood to assert that when God commanded that no satisfaction for the life of the murderer should be taken, but he should surely be put to death, he meant that he should *not* be put to death?

CHAPTER V.

ARGUMENT FROM THE NEW TESTAMENT.—THE ORDINANCE NOT ABROGATED, BUT CONFIRMED.—PROOF FROM PAUL'S WRITINGS AND EXPERIENCE.

We come next to the argument from the New Testament; and here we find, both in the letter and spirit of the Gospel, a strong confirmation of the doctrine taught, on this subject, in the Old. We shall both notice the perfectly groundless assertion, that the penal statutes of the Old Testament were abrogated by our Saviour, and we shall entertain the question, How far does the *spirit* of the Christian dispensation interfere with the ordinance given to Noah, in authorizing and enjoining a greater mildness in the whole code of penal inflictions? It is asserted that our Saviour, in his sermon on the Mount, clearly reprobates the vengeful and retaliating tenor of the laws before his time, referring to one or two in particular: "Ye have heard that it hath been said by them of old time, An eye for an eye, and a tooth for a tooth," &c. Here we answer,

1. That our Lord's teachings were not directed to the laws themselves, either as vengeful or retaliating in an improper sense, but to the abuse of them. He had in view the correction of the spirit of malice and private

revenge; the rebuke and removal of the habit of individual retaliation, for which the Jews most wickedly pleaded the sanction of laws, that were wisely given for the maintenance of public justice. He did not mean to say that the penalties of the Jewish law were too severe, or that they should cease to be executed whenever justice demanded it; but, that individuals should forgive injuries, and should not, for the sake of personal revenge, take advantage of public law, in opposition to the great law of love, on which hung all the law and the prophets. The provisions of the Jewish law were wise and equitable, and not vengeful or retaliatory; but the abuse of them by the selfish and malicious spirit of the Scribes and Pharisees had reached a degree, which demanded the sternest reprobation. The paraphrase of Erasmus on this passage is admirable: "Ye have heard what degree of indulgence the law permitted to our fathers in the avenging of injuries: an eye, it is said, for an eye, and a tooth for a tooth. For God had known their minds greedy of revenge, and therefore he restricted them to certain rules to be applied by the sentence of the judges; the man who had maliciously destroyed an eye, should lose an eye, and he who had destroyed a tooth, should lose a tooth; for if the angry mind had been permitted to take vengeance without such rules, it might often have happened that life would have been taken for a tooth broken. The law therefore was so constructed, that justice might not proceed farther than equity. Now I do not abrogate this law, but confirm it. But I teach

you not to seek revenge ; not to return injury for injury, nor railing for railing, but contrariwise, blessing."* But it is manifest,

2. That our Saviour's teachings had no reference whatever, either directly or by implication, to the primeval statute revealed to Noah. The change from the Jewish dispensation to the Christian had nothing to do with it ; men might as well argue that the divine authority of the book of Genesis was annihilated by that change, as that the sanction was taken from this penal ordinance. What would be thought of the argument, that the change of the Sabbath from the time and manner of its observance in the Jewish synagogues to the time and manner of its observance as the Lord's day, had abrogated the ancient law of the decalogue, to honour the Sabbath and keep it holy ? But we argue,

3. If the Law of Love in the Christian dispensation required the abolition of this statute, the same law must have prevented its enactment, for our Lord draws that law of love from the old dispensation itself. But, it is evident,

4. That both the spirit and the precepts of Christianity confirm it. The spirit of the Gospel, while it inculcates forgiveness upon individuals, approves and requires in "*the powers that be,*" the infliction of just penalties against offenders, the maintenance of order,

* Desiderii Erasmi Roterodami, Paraphraseon in Novum Testamentum. Tom. I. p. 74.

security, and obedience to law. It is remarkable that Paul brings together these two duties, and insists upon them with equal authority, in one and the same passage. He asserts, as clearly as language can do it, that the duty of private forgiveness does not interfere with the course of public justice in the punishment by death. In one verse he says: "Dearly beloved, avenge not yourselves, but rather give place unto wrath;" and then immediately he speaks of the magistrate as *bearing not the sword in vain*, but as "a revenger, as the minister of God, to execute wrath upon the evil-doer." Capital punishment then, and the mild spirit of the Christian Dispensation are not incompatible, but consistent.

Besides this, the precepts of the gospel, in one or two instances, directly suppose the existence of the penalty of death, and as directly sanction it. We believe they contain a manifest reference to the old and well known Noachic ordinance, which had come to be not only a fundamental law, but a fundamental proverb of society. Of this nature is the argument of the Saviour with Peter: Put up again thy sword in its place; *for all they that take the sword, shall perish by the sword.** Of the same nature is the declaration in the Apocalypse: *He that killeth with the sword, must be killed with the sword.*† The form which these assertions take, is one that supposes a universal knowledge and acknowledgment of their truth and certainty; it is an appeal to the authority of a

* Matt. xxvi. 52 † Rev. xiii. 10.

known divine sanction, and to a proverbial sanction, which has grown out of the divine; which has gathered a power of incontrovertible certainty, from the providence as well as the ordinance of God.

We will take next the special argument of Paul on this subject. "Let every soul be subject unto the higher powers. For there is no power but of God: the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God: and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou not then be afraid of the power? Do that which is good, and thou shalt have praise of the same. For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; FOR HE BEARETH NOT THE SWORD IN VAIN: FOR HE IS THE MINISTER OF GOD, A REVENGER TO EXECUTE WRATH UPON HIM THAT DOETH EVIL."*

In this passage several things are brought into view. 1. The divine appointment of human government. 2. A distinct and explicit recognition of the penalty of death for crime as then in existence, and of the righteousness of this custom. 3. A recognition of it not as the result of any compact in society, by which individual rights are committed to the government, but as coming directly from the appointment and authority of God. 4. A recognition of penal inflictions as a matter

* Romans xiii. 1—4.

of pure retributive justice, and not of mere expediency. These are most important deductions. We find the apostle clearly sanctioning capital punishment under the Christian dispensation, and referring it to the ordinance of God; it is the use of the sword in the punishment of crime by magistrates as the ministers of God. There is no other possible view that can be taken of this passage. Calvin calls it in his commentaries "an illustrious place" to prove the divine authority of capital punishment; and he adds that those men contend against God, who deem it an act of impiety to shed the blood of the guilty.*

In addition to all this, we have a passage in Paul's own life, a commentary in his own experience, which sets in a still stronger light the falseness of the supposition that the penalty of death was abrogated under a milder genius in the Christian dispensation. We find Paul himself fully recognizing the justice and the solemn authority of that penalty, in his own person at the judgment bar. When he stood before Festus, who would have had him go up to Jerusalem to be judged by the malignant Jews, he said, "I stand at Cæsar's judgment seat, where I ought to be judged: to the Jews have I done no wrong, as thou very well knowest. *For if I be an offender, or have committed any thing worthy of death, I refuse not to die:* but if there be none of

* Calvini in Pauli Epistolas Commentarii. Vol. I. p. 174. Contendant igitur cum Deo, qui sanguinem nocentium hominum effundi nefas esse putant.

these things whereof these accuse me, no man may deliver me unto them. I appeal unto Cæsar."* Here, as an innocent man, Paul does not appeal to any law of Christ, or provision of his gospel, abolishing the penalty of death, but, in the full acknowledgment of the righteousness of that penalty for the guilty, appeals unto Cæsar, with whom the supreme authority of the Roman government, as superior to the Jewish, lay. This must be regarded as a decisive issue of the question. Paul supposes that there are crimes worthy of death, and that a human government may rightfully inflict the penalty of death for such crimes; he requires a legal investigation in his own case, and if, by such investigation, he be found to have done any thing which deserves that penalty, he does not refuse to suffer it, he is willing to die. The argument thus tested in Paul's own experience, we conceive to be perfect. It is incontrovertible, that so far from there being any abrogation of the Noachic ordinance, either in the letter or by the spirit of the Christian dispensation, we find, in the opening of that dispensation, a new and distinct promulgation of the same.

* Acts xxv. 10, 11.

CHAPTER VI.

PROOF FROM THE CONSENTANEOUSNESS OF DIVINE PROVIDENCE.

One more point of importance as to the lasting obligation of this ordinance remains to be considered, and that is, its consentaneousness with the voice of God's providence. In order to evade the argument drawn from it, some men have asserted that it is only a prediction. Now there are three things that forbid this conclusion: first, the context; second, the absurdity, to which it reduces the climax of the divine covenant with Noah; and third, the after-legislation of God upon this subject.* But supposing for a moment that it might be considered as a prediction simply; it has either been fulfilled, or it has not. If it has not, this reduces it to a falsehood; but if it has, it is principally through the penalty of death enacted in all human governments against the crime of murder; which penalty must therefore be considered as one of God's providential arrangements for the fulfilment of his own prediction, and consequently as

* Non esse autem prædictionem simplicem sine mandato, hoc loco, Deus ipse ostendit, dum in lege sua postea disertam addit sui statuti explicationem, Exod. 21: 12, ubi hanc legem sancivit, *qui percutit hominem ita est morietur, omnino morte plectitor.*—Rivetus in Gen. Exercitatio 59.

possessing his own sanction, as much as the constitution of government itself. Other providential arrangements combine with this, to secure the same result.

Now it is worthy of consideration whether we are not bound to watch the course of the Divine Providence, and where it is clear, to imitate it ourselves, to support its conclusions, to carry into effect the lessons drawn from it. To those who regard the light of nature as of equal authority with the word of God, because emanating from the same divine original, the providence of God constituting, in fact, a great part of the light of nature, this appeal is very powerful. And to those who maintain the decision of Revelation on this subject as final and supreme in its application to all mankind, the appeal is not less consentaneous with their views and feelings. If God has made his will on any point perfectly manifest by the course of events, it is not less obligatory on his creatures to obey it, than if it were written in his word. In such a case events are the utterances of the Deity, the publication of his will, the syllables and hieroglyphics in which men read it, the tables of stone on which it is recorded.

Now the consentaneousness of the course of events with the promise to Noah of what the Divine Providence would do, the perfect adaptation of the reality, as it turns out in the progress of human society, to the rule by God propounded in its commencement, is wonderful. It is so universal, that it has made a deep impression not upon observant and religious minds merely, but upon all minds,

upon the human mind; an impression which has passed into a proverb; and proverbs, we had almost said, are the inspired records of God's providence. And the proverb that MURDER WILL OUT, combines in itself the conviction not merely that murder will be discovered, but will be avenged. The experience of all mankind confirms its truth. Cases might be cited almost by hundreds, in which a retributive providence has tracked the heels of the murderer, its dark form, like the terrible shadow of the crime committed, like a spirit rising from the blood that hath been shed, pressing nearer and nearer, till it has come up with the guilty man, confronted him, and laid him low. *Bloody and deceitful men shall not live out half their days.** Now in view of this expression of the Divine determination, even if we had nothing but the voice of nature to speak to us, it would seem presumptuous to strike out from human legislation its corresponding page; to set up a clause of abrogation, that in fact would contravene this course and declaration of the Divine will; would falsify and stultify the Noachic precept, if considered as a prediction, and would openly and glaringly insult and violate it if considered as a command. But when we regard the Divine Revelation and the Divine Providence together, the course of wisdom, piety, and duty does not admit a doubt.

God, in his word, by direct command, by second and third bills of legislation, explanatory and confirmatory

* Psalm lv. 23.

of the first, and by precepts and general instructions, has clearly manifested his *will* that the murderer should be put to death. He has also in his providence, by giving effect to those laws, by providing institutions for their execution, by establishing the civil magistracy with the power and right of death as a penalty, and by so securing the punishment of the murderer, from age to age, that it has become an instinctive conviction of the human mind that he is destined to death *as* the punishment, a conviction almost as deep as the assurance that the sun will continue to rise and set, manifested the same determination, so that his word and his providence correspond, even as the dial plate of a watch, with the internal arrangement of the machinery, or the waxing and waning of the moon, with the rising and refluence of the tides. Now the attempt to disjoin these manifestations of the Divine will, and to render them contradictory, by securing the murderer *against* death, through the instrumentality of human statutes for his protection, is as absurd and wrong, as if men should attempt by statute to alter the laws of nature.

All mankind have judged the punishment by death to be the only proper penalty against the crime of murder. All mankind have thought thus, because God has so clearly made known *his* thoughts upon the subject. The prejudice, if you please to call it such, is as old as the repeopling of the world after the deluge; it was solemnly sanctioned by the ordinances of God; it has obtained in all nations even more universally, than the

custom of sacrifices; and it has the testimony of the human conscience universally in its favour. And the thing is so evident in the Scriptures, that even from the endeavours of those who argue against them, a man who had never seen or heard them anywhere but in the pages or debates of their opponents, might see which way the truth lies; as an old writer says, it were endless to enumerate the echoes of the Christian Law, which those Rocks that oppose it do themselves reverberate; so that a man intently listening, may gain the beginning, middle, and end of some of those very precepts which they reject. And human experience, though often too late, inevitably finds out the same lessons, which have been taught for our instruction beforehand by Divine wisdom!

The business of a wise legislator is, in Wordsworth's striking language, to copy with awe the one Paternal Mind, and not, by processes humane in show only, but in reality subversive of the good of society, to reject, and as far as possible to thwart, the lessons of that mind. God, in this ordinance of death for murder, and in the consentaneousness of his providence therewith, and in the universal and ineradicable convictions of the human mind corresponding thereto, has communicated a power and majesty to the whole theory and practice of a just human law, of which it were a fearful thing if the state should be shorn; if the dignity and sanction of the state fell below and contradicted the example of the Scriptures and the working of the human conscience.

This truth is finely set forth in the condensed lines of the great moral poet.

> Not to the object specially designed,
> Howe'er momentous in itself it be,
> Good to prevent or curb depravity,
> Is the wise Legislator's view confined.
> *His spirit, when most severe, is oft most kind.*
> As all authority on earth depends
> On Love and Fear, their several powers he blends,
> Copying with awe the one Paternal Mind.
> Uncaught by processes in show humane,
> He feels how far the act would derogate
> From even the humblest functions of the state,
> If she, self-shorn of majesty, ordain
> That never more shall hang upon her breath
> The last alternative of Life or Death.

CHAPTER VII.

ARGUMENT FROM SCRIPTURE CONTINUED.—PURPOSE AND DESIGN OF THIS ORDINANCE.—ITS SANCTION OF THE CIVIL MAGISTRACY.—OF THE ORIGIN OF GOVERNMENT.—OF ITS POWER TO TAKE LIFE.—BENEVOLENT DESIGN OF THIS ORDINANCE.

We are to consider in the next place the purpose and design of this ordinance. It must be considered first, as we have already intimated, as containing the sanction and divine authority of a civil magistracy. Doubtless, this was one of its objects. What goes before asserts and promises the providential interposition of God in making inquisition for blood, and visiting the iniquity of bloodshed on those who were guilty of it. But this ordinance commits into the hands of *men* the solemn and awful power, authority, and duty of taking vengeance. *Whoso sheddeth man's blood,* BY MAN *shall his blood be shed.* Now, as it is not to be supposed for a moment that God meant that any and every individual in the event of a murder should consider himself authorized to kill the murderer; since this would be to produce anarchy instead of order and security in society;—as we cannot suppose that God intended to commit this power at random into the hands of individuals; we must regard it as referring to the formal exercise of justice in the civil

government. We are, in fact, compelled to this conclusion, there being no alternative.*

* The learned Huguenot, Andreas Rivetus, among other commentators, has presented this view of the Noachic ordinance most clearly and satisfactorily, at the same time adducing and refuting the objections of the Socinians, Anabaptists, and others, who, he says, endeavoured to corrupt the passage and elude its force. "Est igitur hoc loco διάταγμα, seu constitutio Dei ipsius ore prolata, qua sanguis homicidæ voluntarii, qui humanum sanguinem ausu nefario effudit, *per hominem*, nempe id ad legitime constitutum, id est, per Magistratum, vita privati debet." "The passage is a rule, by God himself promulgated, according to which the voluntary wicked homicide, the man who maliciously sheds human blood, shall himself be deprived of life *by man*, that is, by the legitimately constituted magistracy."—Rivetus. Exercitatio 59 in Gen.

The expressions of this opinion by other learned writers are equally explicit. "Magistratus hic a Deo instituitur, eique gladius datur in manus. Deus, qui prius totum judicium sibi sumpserat, nec vel Cain ab homine occidi voluit, post diluvium communicat potestatem cum homine, et tribuit ei potestatem vitæ et necis." "The magistracy is here constituted by God, and a sword put into its hands. God, who had hitherto taken the judgment into his own hands exclusively, and did not permit even Cain to be slain by man, after the deluge makes man a partaker of this authority, and gives to him the power of life and death."—Munsterus in Poli Synops. in Gen. IX. Tom. I. p. 110.

In like manner Vatablus: "Hoc versu homicidis mortem denunciat quomodocunque moriantur sive jussu magistratus, sive a quocunque aliunde a Deo misso carnifice." "In this verse death is denounced against the murderer, whether by command of the magistrate, or by any other executioner commissioned from God."—Critici Sacri, Tom. I. p. 158.

And this view is confirmed by the history of the divine legislation afterwards and in detail. For a while, previous to the more regular forms of human government, an institution prevailed, marking the transition state of society, an institution in part voluntary, in part by social consent and sanction, by which the nearest relative of a party murdered was bound to pursue and execute vengeance on the murderer. Even this may be considered as a fulfilment of God's assurance to Noah, that the divine providence would secure the punishment of bloodshed by death. But when afterwards God resumed his legislation on this subject through his minister Moses, he took this imperfect, and in many respects dangerous institution, and adopting it into the provisions of the magistracy, hedged it around with such other forms as were necessary at once to preserve its power, prevent its abuse, and secure to the criminal the privilege of a trial by witnesses. But all this after-legislation bears reference to the first broad statute enacted with Noah, the ordinance designed for all his posterity.

Also Calvin: "Sic autem Deus vindictam minatur ac denunciat homicidis, ut armet etiam gladio magistratus ad cœdes ulsciscendas, ne impune fundatur sanguis hominum." "God thus threatens and denounces the punishment of the murderer, in order that the magistracy may be armed with a sword for the avenging of murder, lest the blood of men should be shed with impunity."—Opera, Tom I. p. 53.

Also Grotius: De Jure Belli ac Pacis. Lib. I. Cap. 2. The command, Thou shalt not kill, Grotius observes, does not disprove the right and duty of capital punishment inflicted on criminals.

That ordinance confers directly from God upon the civil magistracy the power of the sword, the power of life and death, as the highest and most awful sanction of the human government. It clothes the administration of righteous law with a divine authority. It settles the question as to what, in this case, *is* righteous law. It confers a power, which God alone had a right to confer, and which, until he should have distinctly conferred it, perhaps no form of civil society would have had a right to assume; although, if considered as a matter of self-defence, it belongs as naturally and unquestionably to nations as to individuals. It takes the highest function of government as a personification, exponent, or representative of all its just functions, and by surrounding it with all the solemnity and unquestionable authority of a commission from God, establishes forever the principle set forth in such explicit language by the apostle, that "the powers that be are ordained of God; and whosoever resisteth the power, resisteth the ordinance of God; for the ruler is the minister of God, bearing not the sword in vain, but as a revenger to execute wrath upon him that doeth evil." Thus God is seen at the commencement of a new peopling of the world, laying the foundations for the superstructure of the civil government throughout all generations. And thus bringing together again the view of this subject in the Old and the New Testament, our former conclusion is strengthened, that, so far from there being any abrogation of this ordinance either in the letter or by the spirit of the

Christian dispensation, we find in the opening of that dispensation a new and distinct promulgation of the same.

We have said that as a matter of self-defence the right to take life belongs as naturally and unquestionably to nations as to individuals. It is important to dwell for a moment on the consentaneousness of the divine authority in human governments, in this matter, with that which is derived from the pretended elementary and voluntary formation of human society. The right position in regard to the civil government we take to be this: that man, in his essential nature, as he comes from the hand of God, is a social and political being: that law and government are a part of the essential development of the race, as much as living in houses: that man, in respect to the race, is as essentially an animal governing and to be governed, as he is, in respect to the individual, a walking, marrying, thinking, reasoning animal.* The same Being, who made man in the beginning male and female, and surrounded him with all the rights and sacredness of the family constitution, made him in the beginning to be a creature of society, and endowed him with all the rights necessary to the maintenance of society in its most perfect form. We cannot but regard the

* Cicero: De Finibus, etc. in Grotius. "As we make use of our limbs before we have learned what was the design of Nature in furnishing us with them, so we are naturally formed for civil society, without which there would be no room for the exercise of Justice or Goodness."

idea that society comes from nothing but the voluntary compact, as a pure figment of the imagination. The learned Grotius treats it as such in the preliminary discourse to his great work De Jure Belli ac Pacis ; and even Hume expresses very nearly the same opinion.*

Admitting, however, the assumption of the voluntary compact for the sake of the argument, we are met with the assertion, than which there was never a weaker piece of sophistry, that inasmuch as government derives its rights from the delegated rights of individuals, and men cannot delegate that which they do not possess, and no man has a right to take away his own life, therefore, no man can give this right to another, and consequently, no *government* can have the right to take away life in any circumstances.

The falseness of this reasoning may be shown in two ways. First; every man has by nature the right of self defence. If a man's wife and children be set upon by a murderer, he has the right to kill the murderer. Now this right of self defence, which every man possesses in a state of nature, he gives up, to a certain degree, in the compact of society ; it is in part the business of the government to protect and defend individuals, and the privilege so delegated, gives to the government the right to take away life. But,

Second ; the falseness of this reasoning may be shown by the *reductio ad absurdum*. It proves too much. For, no man has the right to imprison himself for life, in a

* Grotius: De Jure Belli ac Pacis. Prel. Disc. VI.

solitary cell, an outcast from society, a contemner of its relative duties. But if he has not this right in himself, he cannot give it to others, and consequently no human government can have the right to imprison a man for life. Taking this course of reasoning, we are brought inevitably to this result. Either way we are forced to the conclusion that a government must have the power of life and death lodged with it for the purposes of human society.

We believe that it was one design of God by the Noachic ordinance solemnly to confer this authority, and place it beyond dispute. Besides this, it was his purpose to set up a barrier, which had not before existed, against the cruelty and violence of men's passions; to hedge in and restrain their malice and hatred by penalties, which do not seem to have been known in the Antediluvian world.* At the outset he comforted Noah, who remembered the violence and wickedness of the Antediluvians with terror, by the assurance that crime, and especially the crime of murder, should no more go unpunished, or slightly punished, as it had done; there should be a greater carefulness of human life, a greater regard to its sacredness. In the Antediluvian world the milder

* Grotius is of this opinion. De Jure Belli ac Pacis. Lib. I. Cap. 2. sec. 5. Grotius quotes, as usual, some striking passages from ancient writers; the following from Thucydides: "It is probable that in former days heinous crimes were slightly punished; but when in time these punishments came to be despised, they were changed into death." In Lib. III. De Bello Pelopon. § 45.

course had been chosen, but in vain; the mildness of that legislation only tended to fill society with violence and crime. God spared Cain, and the consequence was, since no murder could ever be committed under more aggravating circumstances than that of Abel, that every murderer felt secure. This was the very reasoning of Lamech. Informing his wives that he had slain a young man, having been himself also wounded, he comforts them against the fear that vengeance might be taken upon him, by referring them to God's lenity in the case of Cain; and if, says he, a sevenfold vengeance was threatened against any man who should kill Cain, be assured that the life of Lamech shall be protected seventy times seven. Lamech was the last lineal descendant of Cain mentioned in the Scriptures; so that we have the remarkable fact that the very first thing known of Cain is the murder of his brother, and the very last thing related of his posterity is the slaying of a young man perhaps quite as unnecessarily; for we have no testimony but Lamech's in the case. The act of manslaughter may have been committed in self-defence against an individual or a marauding party, who had set upon him, or, he may himself have provoked or begun the contest, in such a manner, as to make it actual murder.

Now this reasoning of Lamech was very natural; and God, we may suppose, was willing to permit the experiment of such mildness, in order to demonstrate more fully the monstrous wickedness of men. The demonstration was terrific; the earth was filled with violence;

the deluge followed, sweeping the earth of its corrupt inhabitants; and now, with Noah as the world's second progenitor, God was determined to establish a code of laws of more efficient and salutary severity. It was as if he had said to Noah and his sons, Fear not, although ye know, and tremble to remember, the violence that has hitherto filled the world of the ungodly, the dreadful carelessness of life that has prevailed, and the dreadful scenes of destruction that were enacted habitually. It shall be so no more. If there be a Cain in your posterity, he shall be slain for the life of his brother. Whoso sheddeth man's blood, by man shall his blood be shed. Whoso defaces and destroys by violence in the person of his brother the image of his Maker, shall himself be put to death without mercy.

Here it should be remarked that we do not need this antediluvian argument to strengthen our conviction of the wisdom of this statute, or to protect its reason from cavil. Neither is it necessary that we should know the cause of its not having been promulgated as early as the first murder. Its intrinsic reasonableness carries an appeal to the human mind; and moreover, Jehovah has condescended to annex to it the highest possible reason that could be supposed or given; neither can our ignorance of the reason why an ordinance based on such perpetual grounds was not promulgated at a previous period weaken the nature of such grounds in our estimation, our diminish our sense of the intrinsic reasonableness of such an ordinance. If it did, we might also

say that the late promulgation of the Christian Religion to the Gentile world was a proof that it is not of universal necessity, nor of scriptural excellence, for that, if it had been, it would assuredly have been promulgated to all the world much earlier, which reasoning would be a most presumptuous and daring arraignment of the wisdom and goodness of God.

The ordinance thus established at the commencement and foundation of society, was evidently and pre-eminently an institution of benevolence. God's design in it was one of love to his creatures. Every part of the divine covenant with Noah is marked with mercy, as if the divine justice had been fully displayed and vindicated with earth's cleansing by the deluge, and now again God had nothing to do but to bless his creatures, as at the beginning of creation, and to form institutions, and reveal promises for their good. As an institution of benevolence this ordinance was first promulgated; as an institution of benevolence it has been continued for the welfare of the human community; to make the life of man a sacred charge committed for safe-keeping not only to every individual, but to organized human society. The attempt to fix upon it the stigma of cruelty, the reproach of being the offspring of a hard-hearted age and people, cannot but be regarded as an extremely presumptuous and insolent judgment of the divine wisdom; a judgment founded on no better grounds than those with which some men would arraign the Supreme wisdom and benevolence at the bar of ignorance, prejudice, and unbelief in this

world, because the punishment of eternal death is affixed to the violation of the Divine Law by Jehovah.

In the case of Noah, it was not a race of savages for whom God was legislating; it was the germ of a refined people, a cluster of families with all the refinement and knowledge of the Antediluvian world. If some two or three English families of education and refinement, the father and ruler of their households being eminently a man of God, should be placed upon a desert island to colonize it, the laws which should be framed for its government would assuredly not be promulgated for a race of barbarians; they would not be devised on the supposition that the posterity of these families would be savage, ignorant and ferocious. They would be framed to prevent the possibility of such a race existing. They would be of a nature suited and intended to secure the happiness of a society of intelligent men and women. And such were the laws which God framed for the world's government under Noah: laws adapted to the world in its best state, and which will remain in the period of its greatest glory. They were, in point of fact, made and issued when there was a greater proportion of religion in the world, than there has been at any period since. Perhaps three fourths of the world's inhabitants were sincere Christians; nor is the use of the word Christians an anachronism; for Noah, like Abraham, saw Christ's day, and believed in the foreshadowed atonement. This grand Noachic ordinance, therefore, far from being the product or the ne-

cessity of an uncultivated and irreligious age, was rather the offspring and the excellence of cultivation and of piety; it was the gift of God to a Christianized Humanity. It was God's bow, set in the angry clouds of human passion, binding and restraining them; revealing God in the same attitude of mercy, as when, to calm the fears of the grateful and admiring patriarch, he spanned the threatening masses of the storm with the lovely colours of the rainbow; erecting, in this ordinance, a sign of peace and order for the moral world, as full of beauty and security, as the rainbow for the natural world.

There is a deplorable disregard of truth, as well as a surprising degree of ignorance, in much of the declamation against this statute. What senseless references men are often found making to a supposed barbarous state of the world, which may have made this statute necessary, though a more refined state of existence would render it unnecessary! It can only be inconsequent, inaccurate, and forgetful reasoners, who will be deluded by such declaimers. Not only was this law first given forth while there was a greater proportion both of piety and wisdom in the world than there has ever been since, but it was re-enacted many centuries afterwards, still more explicitly, for the wisest, most refined and religious community in the world's history.

We have said that the design of the Deity in this enactment was evidently a design of love; we may now add that the attempt to take away the sanction of the

penalty of death, whether from the human or the divine government, is not an attempt of mercy, but against mercy, against the highest purposes and views of the divine goodness. We know well who it was that in the beginning attempted to persuade the parents of the human race that no such penalty as that of death for the violation of law existed; it was no benevolence in him that led to the denial of this penalty, neither is it benevolence that in our time would lead to its abrogation. It was good and benevolent in God to affix to human law by divine authority, the highest penalty, of which, in the nature of things, human law is susceptible. That penalty is death. Its annexation to law in this world was an act of wisdom and goodness. It foreshadows and proves by analogy the principles of the divine government in eternity. As the highest penalty possible in the nature of things is annexed to the highest violation of law in this world, so, and with equal wisdom and goodness, the highest penalty possible in the nature of things is annexed to the violation of the divine law in eternity. Man can kill the body, and it is all that he can do; but God can destroy both soul and body in hell.

CHAPTER VIII.

ARGUMENT FROM SCRIPTURE CONNECTED WITH THE ARGUMENT FROM EXPEDIENCY.—WISDOM AND NECESSITY OF THIS ORDINANCE.—COMMONNESS OF THE SPIRIT OF CAIN IN HUMAN SOCIETY.

We are now to consider the wisdom and necessity of this ordinance. So far as facts in past ages can teach us, we take this to have been clearly demonstrated in the experience of the world before the flood, so that it was not consistent with the wisdom and goodness of God to repeat the experiment made with the progeny of the first murderer. The lenity that characterized the divine dealings with Cain in the Old World would have been misplaced if continued in the New. In order to prevent society from running the same race of wickedness, a different order of things was necessary; a different period of life, a different code of laws, a different set of institutions. We cannot indeed tell with absolute certainty what might have been the result, if God had not set up the barrier of this enactment, but it is probable that there would have been less and less regard to the sacredness of human life, and men's passions would have increased with indulgence, till it would have become a customary thing, for the gratification of malice, to take life with very little provocation.

Men would have stabbed and killed one another, in a sudden fit of anger, or for the execution of some cherished spite, with as much freedom and commonness as they would kill a noxious animal. "Am I my brother's keeper? Who shall call me to account?" It is to be remembered that the very first crime on record after the fall is that of murder, and not only so, but the murder of one's own brother; and as we have no reason to believe that Cain, as a specimen of humanity, was any worse than his descendants, and on the contrary are assured by divine authority that the spirit of murder dwells in the heart of every man that loveth not his brother according to the gospel, it is probable that murder was frightfully common in the antediluvian world; it is probable that it would have been quite as common in the world after the deluge, if God had not set this barrier against it. No man can tell how much of its peace and security society owes to this very ordinance, how much of the fearfulness that now invests the crime of murder, and of the horror with which all men regard it, has been thrown around it by God's annexing to it this awful penalty. Those who desire the abrogation of this law, and reason against it because of its severity, can have little conception of the state in which society would now have been existing, if from the beginning of the world there had been no such divine enactment.

Neither can it be told how greatly the absence or the abrogation of this law would have weakened the force of all other penalties, each lower penalty suffering in its

degree, and all together being shorn of that awful power, which invests the functions of Law, when the dread alternative of life, or death, the power of the sword, in the language of the apostle, stands ministering to its judgments.

The brief, dark, stern account of the first murder is terrible in its warnings and its lessons. It shows four things;—the fatuity and sullen insensibility of the murderer;—the intolerable deadliness of his crime;—the certainty of its discovery and punishment;—and the nativeness of the spirit of murder. The fatuity of this guilt is one of its peculiar characteristics; a man under the influence of a guilty conscience loses his common sense, and becomes mad, blind, foolish. Murder betrays itself sometimes by its insane anxiety for concealment. The manner of Cain's answer might have made it evident to any person that he was the murderer. In all probability he had been hiding Abel's body. This would naturally be his first step after killing him. He would hastily dig a pit in the ground, or at least drag the corpse of his murdered brother into the woods, and cover it with leaves and branches; and as he did not think of the interposition of God in the discovery and punishment of his crime, he might have expected to keep it concealed from every creature. He had a ready falsehood for his father and mother, if they had inquired after their murdered son. And the same falsehood was just as ready for God. "And the Lord said unto Cain, Where is Abel thy brother? And he said, I know not:

am I my brother's keeper?" And yet the murderer could scarcely have had time to wash the stains of his brother's blood from his own hands, and to cleanse his raiment. There he stood before God, pale and trembling, with hell in his soul, the first murderer and the first liar!

"And God said, What hast thou done? the voice of thy brother's blood crieth unto me from the ground. Thou art cursed from the earth, which hath opened her mouth to receive thy brother's blood from thy hand." This most striking declaration finds a solemn commentary in that passage from the book of Numbers already quoted. It shows that there is that ingredient in the crime of murder, which will not suffer God to rest till it be expiated.—But the spirit of Cain, and the commonness of Cain's answer in this selfish world, is that which touches most sharply the present tenor of our argument. *Am I my brother's keeper?* There was as much murder in Cain's answer as there had been in Cain's actions. But this is not all. It embodies the spirit of the world in opposition to the spirit of the gospel, the spirit of selfishness in opposition to the spirit of benevolence, the spirit of hatred in opposition to the spirit of love. The same spirit which makes Cain the questioner, will, in appropriate circumstances, constitute Cain the murderer. A man who will ask, Am I my brother's keeper? will rise up in the field against his brother, and slay him. Hence the necessity of the terrible severity of the divine ordinance against this crime.

Am I my brother's keeper? Yes! thou *art* thy brother's keeper. On the gospel scheme thou art; by the law of God thou art; for thou shalt love thy neighbour as thyself. If thou art thine own keeper, thou art also thy brother's keeper: and in the highest and most sacred point, this ordinance is designed to show it: this ordinance was necessary as the safeguard of this truth, Thou *art* thy brother's keeper.

We therefore take the necessity of Capital Punishment to have been very clearly demonstrated by men's experience before the deluge. We can hardly suppose that unless God had found it necessary for the well-being of society, he would have increased the severity of any enactment; and his placing this enactment the very first thing after the deluge in the fore-front of all legislation, does, of itself, argue a necessity growing out of the very elements of human depravity. If necessary for the good of society, then was it also benevolent and wise; and its terrible severity, which by some is made the grand argument against it, is the very proof of its wisdom. All those arguments which go to show its cruelty, so called, go to show its wisdom, for they show its efficacy. This would not be the case, if the punishment were unjust, were contrary to men's natural ideas of justice. This it is not; the experience of all murderers, and the testimony of all men's consciences from Cain downwards prove that it is not. If the punishment were unjust, then, the greater its severity, the

greater its injustice; but admit the enormity of the crime and the justice of the punishment, and then every powerful colouring, in which you depict its severity, shows more clearly its wisdom, for it shows it to be the more perfectly adapted to the end you have in view.

CHAPTER IX.

ARGUMENT FROM EXPEDIENCY CONTINUED.—CONSENTANEOUSNESS OF THE LAW OF NATURE WITH THIS ENACTMENT.—THE POWER OF CONSCIENCE, AND THE NECESSITY OF RIGHTEOUS LAW TO SUSTAIN IT.

It is important to dwell for a moment on the consentaneousness of the law of nature with this enactment. We speak now of the spontaneous and natural opinion of mankind as in all ages developed. The universality of the sentiment in the soul of man respecting the justice and necessity of the punishment of death for murder is such, that we might well regard it as a part of the Law of God written on the heart: the common thoughts and usages of nations, even in the light of nature merely, would go far to corroborate this opinion. The experience of Cain himself, in the commencement, sheds a singularly powerful light on this part of the subject. His conscience told him, before either his crime, or any law against it, or for the avenging of it, had been promulgated, that he was worthy of death; worthy of the same last evil, which he himself, in his enormous iniquity, had inflicted on his own brother: the very foreboding of his soul within him declared that all mankind would seek to kill him; and it would seem that in order to avoid this, it was necessary to resort to some particular edict in defence of Cain. This deep horror of the

crime of murder, and this inwrought image and prediction of avenging justice, supported by the voice of God, has been developed wherever men have grown into communities. We have an instance of this, of very peculiar interest and power in the "barbarous people," who, though the majesty and dignity of Rome called them barbarous, like all foreigners, showed so much courtesy and kindness to Paul after his shipwreck. "No doubt," said they among themselves, when they saw the venomous viper, from the fire which he had kindled, hanging on his arm, "No doubt this man is A MURDERER, whom though he hath escaped the sea, yet vengeance suffereth not to live." This is indeed very striking. This vengeance, ἡ δίκη, this divine justice, had a strong place in the convictions of the ancients, and the sentiment here expressed in regard to the guilt and just desert of murder it would seem is the natural sentiment of the heart; a sentiment which, stamped by the divine sanction, is proved to be as just as it is natural; though, if not supported by the divine authority, it is evident that it would soon lose its power, and become obliterated. The natural conscience of mankind gets exceedingly darkened and corrupted without the light of revelation; and our sense of the enormity of any crime may be greatly moulded by the nature of the penalty annexed to it; so that, in the course of ages, supposing the penalty of death had never been connected by the Almighty with this crime, we might have come to consider its iniquity as very slight.

The reason for this mysterious depth and intensity of feeling in regard to the nature of justice in the case of a murderer is to be found partly in the fact that the crime of murder is itself the climax and concentration of all malice, in the violation of the great law of love, on which hang all the law and the prophets.

> ——— The offence is rank ; it smells to Heaven,
> It hath the primal eldest curse upon it.

Hence the universal conviction that murder cannot be concealed ;

> Those dread Beliefs, coiled serpent-like about
> The adage on each tongue, MURDER WILL OUT.

God forbid the legislation, that should weaken the protecting power of these inward prophets and ministers of justice ! " The voice of thy brother's blood crieth unto me from the ground !" The whole creation of God seems to array itself against the offender ; the elements scowl and darken upon him ; the air is " with dreadful faces thronged."

> The fiends in his own bosom people air
> With kindred fiends, that hunt him to despair.

The feeling of sure discovery and retribution follows the murderer himself the world over ; and the very image of his iniquity,—the " damned spot," which he cannot wash out, the bloody dagger which he sees before him, —draws him to the sufferance of its penalty.

The ERINNYS of the ancients,—their EUMENIDES with serpent-wreathed heads,—is a creation of the mind of man, which speaks volumes as to the predictive truth and power of the human conscience. The etymology of the word from Ἔρις and Νοῦς the strife or *fury* of the *mind*, is a tremendous revelation.* It opens up at once, to any man whose thoughts will pursue it, the whole doctrine of an internal hell in the unquenched elements of human passion. Some of the most remarkable passages in classical literature, in which the ministry of the Furies is introduced, are those connected with this very crime of murder as the occasion of the sentiment. There is a striking similarity between the descriptions in heathen writers and those in the Scriptures themselves in regard to the just providence of God making inquisition and executing vengeance for blood. "For this," says the prophet Tiresias to Creon, in the Antigone of Sophocles, "For this are the Furies of Hell and of the gods, pursuers with penal vengeance, lying in wait for thee, that thou mayest be insnared in the very same misfortunes."†

* These, says the poet Gray, alluding perhaps to this very derivation of the word, and contemplating a group of youthful beings:

These shall the vulture passions tear,
The FURIES of the mind!

† Ψυχὴν τ' ἀτίμως ἐν τάφῳ κατώκισας·
* * * *
Τοὔντων σε λωβητῆρες ὑστεροφθόροι
λοχῶσιν Ἅιδου καὶ θεῶν Ἐριννύες,
ἐν τοῖσιν αὐτοῖς τοῖσδε λημφθῆναι.
Antigone of Sophocles, 1064–1076.

To this purpose may be noted the πρόμαντις Δίκα and the χαλκόπους Ἐρινύς of the Electra; this expression of *prophetic* justice conveying, to any mind that will reflect upon it, a great and high idea beyond that which is ordinarily attached to the signification of the word in human society.* The highest idea of justice *is* a prophetic idea, pointing to a future retribution.

That is a powerful passage in which Webster has depicted the workings of the murderer's conscience, the impossibility of hiding his crime. "The whole creation of God has neither nook nor corner where the guilty can bestow such a secret, and say it is safe. The guilty soul cannot keep its own secret. It is false to itself; or rather, it feels an irresistible impulse of conscience to be true to itself. It labours under its guilty possession, and knows not what to do with it. The human heart was

The Hebrew idea of the pollution of the land by blood, in the view of the Deity, and of the necessity of expiating it by blood again, is exhibited in the Oedipus Tyrannus of Sophocles. See from the 95th line to the 141st.

"Homicidæ plerumque poenas luunt cœdis," says Le Clerc, "seu in judicum manus incidant, seu justa Dei providentia, violenta nece intereant." He quotes Æschylus in the Agamemnon:

Τῶν πολυκτόνων γὰρ
οὐκ ἄσκοποι θεοί·
Κελαιναὶ δ' οὖν ἐρινύες χρόνῳ—etc.

The gods have their eyes upon bloody men; they are not wanting in vigilance. The black Furies hurry them to darkness. Le Clerc in Gen. IX. Commentarius, p. 79.

* The Electra, Chorus 473–515.

not made for the residence of such an inhabitant. It finds itself preyed on by a torment, which it dares not acknowledge to God or man. A vulture is devouring it, and it can ask no sympathy or assistance, either from Heaven or earth. The secret which the murderer possesses soon comes to possess him, and like the evil spirits of which we read, it overcomes him, and leads him whithersoever it will. He feels it beating at his heart, rising to his throat, and demanding disclosure. He thinks the whole world sees it in his face, reads it in his eyes, and almost hears its workings in the very silence of his thoughts. It has become his master. It betrays his discretion, it breaks down his courage, it conquers his prudence. When suspicions from without begin to embarrass him, and the net of circumstances to entangle him, the fatal secret struggles with still greater violence to burst forth. It must be confessed, it will be confessed; there is no refuge from confession but suicide, and suicide is confession."*

Ye brood of Conscience, Spectres! that frequent
The bad man's restless walk, and haunt his bed,
Fiends in your aspect, yet beneficent
In act, as hovering angels when they spread
Their wings to guard the unconscious innocent!
Slow be the statutes of the law to share
A laxity that could not but impair
Your power to punish crime, and so prevent.

* Webster: Argument on the trial of Knapp. Speeches, Vol. I., p. 452.

And ye, Beliefs! coiled serpent-like, about
The adage on all tongues, Murder will out!
How shall your ancient warnings work for good,
In the full might they hitherto have shown,
If for deliberate shedder of man's blood
Survive not judgment that requires his own?

WORDSWORTH.

CHAPTER X.

OBJECTS OF THE PUNISHMENT OF CRIME.—WHAT CONSTITUTES THE PERFECTION OF CRIMINAL JURISPRUDENCE?—THE THEORIES OF GODWIN AND HUME.—DIFFERENCE BETWEEN JUSTICE AND REVENGE.

It is necessary for a moment to consider what is the object we are seeking in the punishment of crime in this world, and what, consequently, would be the perfection of criminal jurisprudence. The punishment of crime in a world of probation we believe to have three ends; justice, the good of society, and the reformation of the offender. That there is such a thing as justice, separate from the other aims of penalty, can be clearly demonstrated. The very word conveys an idea which is not to be confounded, or lost sight of, in the *expediency* of Law; the word Justice does not mean the same as the word expediency; men sometimes forget the latter, and have their minds solely fastened on the righteousness of the former. Some crimes are so enormous, so brutal, so shocking, so cruel, that the whole moral sense of the community rouses up against them, and calls for penal infliction; it is not the spirit of retaliation, it is no personal malice, no feeling of ill-will that gives utterance to this call; it is justice that is demanded, the intuitive, spontaneous expression of the moral sense of what is

proper and right; and the good of society and the reformation of the offender are forgotten in the urgency of this demand.

This feeling of the nature and necessity of justice is developed individually still more clearly than in the moral sense of the community. No man with right feelings ever sees a man that is unjust and cruel even to his beast, without wishing to punish him; if you see a waggoner in the street needlessly beating his horse, you will wish to beat the waggoner; no man ever sees a brute in the shape of a man wantonly inflicting violence upon his brother man, but feels that he *ought* to be punished; and yet there is no vengeance in this sentiment, nor any idea of restitution, nor any particular thoughtfulness for the good of society, but a deep, spontaneous feeling that the man *deserves* punishment, that it is an outrage on the moral sense to let him go without it, that he himself ought to be made to *feel* the wickedness of his conduct. This is especially the case, if the man be hardened, sullen, and obstinate; if he show sorrow and contrition, there is a very different feeling; contrition itself, as showing that the man is pained and suffering for his crime, seems to meet, in some measure, this spontaneous demand for justice.

We think this view is sustained by Grotius, in a good degree, though he does not pursue it, but confines himself to the argument from expediency. Nevertheless, he defines punishment as *malum passionis, quod infligitur ob malum actionis*, evil inflicted, on account of evil com

mitted; and in the following extract there is a higher ground indicated than that taken by many writers on this subject.

"Among those things, which Nature herself tells us to be lawful and just, this is one, That he that doeth evil, should suffer evil; which the philosophers call the most ancient and Rhadamanthean law. To the same purpose is that saying of Plutarch, Τῶ Θεῶ ἕπεται δίκη, &c. Justice is the attendant of God to take vengeance of those who transgress the divine law, which all men naturally have recourse to against all men as their fellow-citizens. And Plato declares that, Neither God nor man ever said this, that he who hath done wrong to another, doth not deserve to suffer for it. And Hierax describes justice by this as the noblest part of it, that it is the execution of punishment on those who have first offended. And Hierocles calls punishment the medicine of wickedness. And Lactantius says, They are guilty of no small error, who miscall punishment, either human or divine, by the name of bitterness and malice, imagining that he ought to be esteemed guilty, who only punishes the guilty.*"

The reasoning of many persons on this subject would conduct us to the conclusion that in fact there is no such thing as *desert* to be considered in human society; that a man is not punished, or ought not to be punished, because he is guilty, but SOLELY because the punishment is use-

* GROTIUS: De Jure Belli ac Pacis. Lib. II. Cap. 20. § 1.—See also what Grotius says of Justice, Book I. Chap. 9.

ful, and therefore that no man ought to be punished from respect to what is past, but solely from regard to the future. This is the argument pursued by Hume;* but Godwin carries it out more fully. It is the result to which all must come, who deny the propriety of punishing a man simply because he *deserves* to be punished. Godwin argues that, strictly speaking, there is no such thing as *desert;* it is a chimerical idea; and therefore the common idea of punishment is altogether inconsistent with right reasoning. The infliction should bear no reference to a man's innocence or guilt. An innocent person is the proper subject of the infliction of suffering if it tend to good. A guilty person is the proper subject of it under no other point of view.†

Now it is not requisite to hold to this writer's system of Necessity, in order to come to this absurd conclusion; for if the utility of punishment be absolutely the SOLE ground of its infliction, the only reason why it is just and proper to inflict it, then this conclusion is perfectly correct. And if our courts of justice could take perfect cognizance of future results, so as to be sure that in any given case this method would on the whole be productive of the greatest good, they *ought* to punish the innocent just as much as the guilty. This monstrous proposition is just a fair result of shutting out the idea of simple justice in view of desert, as *one* of the ends of penal infliction. This end, let it be remembered, is

* HUME: Philosophical Essays. Principles of Morals, Sec. 3.

† GODWIN: Political Justice, Book VII. Chap. 1.

not *revenge*, embraces in itself nothing of the idea of revenge or of a revengeful spirit; although it is one of the most common pieces of sophistry to argue against the punishment of death for murder as if it were revengeful and on that account barbarous, when it has no more of a vengeance in it, than imprisonment for life, or any other penal infliction. It has justice, and so has every appropriate penal infliction; and the moral sense of the human mind intuitively demands and regards justice as one of the objects of such infliction; a truth which we think every reflecting mind must acknowledge, if it be not blinded by a system of philosophy founded solely in expediency.

This requisition of justice by the moral sense has a development in reference to nations as well as individuals: and in this direction sometimes it may be seen more clearly how distinct is this sentiment both from that of retaliation on the one side and expediency on the other. There is scarcely an individual, for example, who would not be glad to see the government of France humbled and severely punished for the atrocious iniquity of her war against Tahiti. We should rejoice to see her compelled to restore fourfold for the injury done in her pride of power, to an entirely unoffending and defenceless nation. This is the sentiment of justice; it is the spontaneous demand for it in the human mind.

Other crimes again are so *dangerous*, that the sense of the community and the aim of the law fasten mostly on the good of society; so that neither justice, as we

have spoken of it, nor the good of the offender, are much thought of. The good of society indeed will be acknowledged by all to be the great important aim of Law and its penalties in a human government. The good of society comprehends several things which have sometimes been enumerated as separate ends of penalty; restitution to men defrauded or injured, the support of law in its dignity, the strength of the government, the confirmation and support of virtue, and the restraint of vice.

Other crimes, again, are of such a nature, or committed under such circumstances, that the reformation of the offender may be the principal thing for which punishment is regarded. But it is evident that there are crimes so dreadful, as to make it necessary that justice and the good of society solely shall be considered.

If now all these three ends of the punishment of crime could be always attained together, it would be the very perfection of criminal jurisprudence; but it is very far from being the perfection of criminal jurisprudence to have it as mild as possible. There are ends to be attained much higher and more important than that of mildness and benevolence to the offender.

Yet even in the punishment of a murderer by death it is possible to unite all the three objects of the law, justice, the good of society, and the reformation of the offender. Not indeed his reformation in point of morality merely, or his living a moral life as a correct member of society; for this the alternative of perpetual imprisonment contemplates as an impossibility, even if the

punishment of death were abolished; but his spiritual and eternal reformation, his repentance towards God, a deep and holy change in his character, the pardon of his sins through faith in the blood of his Saviour, and a preparation to meet God and be blessed in his presence. This the sparing of his life in imprisonment might utterly prevent, when the sentence of death might have been the means of a hardened criminal's conversion.

CHAPTER XI.

THE ENDS OF PUNISHMENT FURTHER CONSIDERED.—FALSE VIEW OF THE MATTER.—DIFFERENCE BETWEEN PUNISHMENT IN THIS LIFE AND IN THE LIFE TO COME.

It is one of the greatest mistakes, both for this world and for Eternity, to suppose, as some of the oppugners of the penalty of death for murder contend, that punishment is always or exclusively designed for reformation. That it is not so, the common sense of all mankind avows. It is well known that penal laws, with their sanctions, contemplate not reformation, but punishment. Punishment is the end; the effort at reformation is subservient and secondary. The penalty of violated law is suffering, not reformation. If it were not suffering, if it were not severity to the offender, if it were mere reformation, it could not be called penalty. What sort of logic would it be to say to the thief, You shall pay the penalty of your crime by being reformed, or to the murderer, You shall atone for your violation of the highest law, human and divine, by being made good and happy? Penalty is suffering, and suffering is inflicted as punishment, for the benefit of society, and not for the benefit of the criminal. The reformation of the criminal is an effort separate and distinct from the satisfac-

tion of justice, and the security of the community. It is an effort of wisdom and mercy, to come in along with, and after, and also by means of, the punishment, but it is not the final cause of the punishment. The words desert, justice, punishment, convey ideas over and above the idea of utility. We do not punish because it is useful, but because it is deserved and just; and being deserved and just, it cannot but be useful. There can be no doubt that punishment, even in this world, is sometimes called for, apart from the question whether it be useful or not. Indeed, there is sometimes a demand in the bosom of the guilty person himself, for punishment, and a sort of satisfaction beneath the punishment, as if a necessary law of the human mind, apart from all considerations of utility, were complied with. No doubt such a law exists, in regard to retribution for sin; and though there can be no conceivable case in which such retribution is not useful, still the human mind, in its judgment of the matter, does not base the necessity of retribution upon its usefulness, but upon its justice. Its intrinsic *justice* is the ground of its *utility;* its *utility* is not the ground of its *justice*.

Every possible effort ought to be made to reform the criminal, but he is not to be taught that he is punished solely for his own good, this being a perfect lie in the face of all legislation, human and divine. If his reformation were the end of his punishment, then the moment he repents he should be restored. The murderer should come back to society with all the esteem and happiness,

which an innocent man could enjoy. But God teaches, and human legislation, under God, teaches, that punishment is the just and necessary vindication for the violation of righteous law. It is such in this world, it is such, also, in the Eternal World. Punishment in the Eternal World must be, with respect to the individual, the work of Justice solely. Punishment in this world would also be the work of Justice solely, without possibility of any effort at the reformation or restoration of the offender, if it were not for the intervention of the grand and infinitely merciful atonement for sin by the sufferings and death of Jesus Christ. This holds the violator of law in a world of probation in such a position of mercy, that while punishment is inflicted as justice, it may also be turned into a medicine of reclaiming love; it may be attended and followed by all possible efforts to soften the heart and bring the criminal to repentance.

There is, then, this mighty difference between punishment in this life, and punishment in the life to come. I have mentioned three ends to be attained in this life, but there are only two, which are possible in Eternity. Justice, and the good of God's universe, are all that can be consulted there. The reformation of the offender is tried in this world, has in every case been tried, and if without success here, then there remains no more effort to be made hereafter. Even if such effort *could* be made in Eternity, it would be useless. But it cannot be made. This is our world of probation, and there is

none other. In the future life there remaineth no more sacrifice for sin, and the efficacy of the system of Redemption, in suspending the sword of Divine Justice from the unrepentant guilty, lasts no longer than the limits of this life; it extends not into eternity. It was not made *for* eternity, but to *prepare* men for eternity, to save men from eternal perdition, and if it fails in that, by the offender continuing unreclaimed through all the period in which he *might* be reclaimed, it has no more that it can do, and punishment for the ends of justice and the good of the universe is the only thing that can follow. These are truths that commend themselves as perfectly to the human reason, as they show themselves clearly in the Divine Revelation; but they cut men off completely from the theory that the sole end of punishment is reformation.

CHAPTER XII.

FEARFULNESS AND EFFICACY OF THE PUNISHMENT BY DEATH.—CAUSES OF THE DREAD OF DEATH.—PROSPECT OF THE GUILTY IN ETERNITY.—OBJECTION CONSIDERED, OF CUTTING OFF THE CRIMINAL IN HIS SINS.—THE ANSWER OF GROTIUS.—ANSWER FROM FACT AND EXPERIENCE.—ALSO FROM THE DIVINE PROVIDENCE AND FROM EXPEDIENCY.—OBJECTION CONSIDERED, OF THE UNWILLINGNESS OF JURIES TO CONVICT IN CASES OF MURDER.

Some men argue that punishment by death is not, after all, so severe and terrible, as to make it of all modes of punishment the most efficacious to deter men from crime. It is asserted that hardened villains, for example, fear death very little, and that to some the idea of imprisonment for life is far more terrific. Now we do not believe there is an individual in existence, who, if the alternative were presented of choice between an ignominious death and imprisonment for life, would not choose the latter. There are degrees in the fear of death, and some men are more afraid to die than others, whose preparation for death is no better than their own; but in proportion as the laws are well administered, the tone of moral sentiment healthful, a good common school education prevalent, and the Sabbath well observed in any community, death will be regarded by all as the last and most terrible of punishments to a criminal.

Skin for skin, all that a man hath, will he give for his life; a true proverb, and not the less correct, because uttered by the father of lies, himself a murderer from the beginning. There is no passion so strong as the love of life. The aphorism of Lord Bacon is not true, that "there is no passion so weak but mates and masters it." There is no grasp so tenacious as that with which men hold on to life; no delusion more powerful, than that which makes them count upon long years of life in store, though living quite unfurnished for the world to come.

All men think all men mortal but themselves. Hand in hand with this love of life goes the delusion that life will be preserved, even when, for the indulgence of passion, it is hazarded. When a man is under the influence of any passion that is said to "mate and master" the love of life, it is not the loss of life, the issue of death, that the passion contemplates, but the accomplishment of some scheme, the gratification of some desire, that will render life itself more agreeable. The man expects to have his life continued. Because a passion leads a man to incur danger, to put himself in a situation where life *may* be lost, it proves by no means that the love of life is overcome by the passion; the passion itself grows out of the love of life, life in a particular desired way. The possibility of dying is not the hazard on which a man stakes the indulgence of his will in this sort of gambling, but the probability of living; life itself, in greater enjoyment, is his inducement for the stake.

We remember to have been very much struck with the

death-scene of a celebrated romance-writer in Germany, who, up to the very last, persuaded himself that he should get well, and spent some of his very last moments in dictating the pages of a new novel he was composing. "Only life!" was his exclamation, "this sweet life! life at any price, life even with suffering, only life, life, life!" True, it is not every one to whom life is so sweet. But there is an immeasurable distance between the highest, sternest, severest punishment and death. Hence, you will rarely find cases of suicide in prisoners for life; but when the sentence is that of death, strange as it may seem, sometimes the very horror of death produces self-destruction.

We have not far to look for the reason of all this. In truth, this powerful love of life, and this extreme terror of death, are because it is not so much the article of death that men fear, as what comes after death; nor is there any other passion save one, that can subdue the love of life and the fear of death together, that which was the master passion in Paul's bosom, that, from the object of which neither life nor death, things present nor things to come, could separate him. *It is appointed unto men once to die, and after that the judgment.* It is because men dread the judgment. It is because of that unknown, untried future, which is ETERNITY. It is because men have lived unprepared to meet God, and when death stares them suddenly and unexpectedly in the face, then the reality of an endless retribution bursts upon them. It is because the soul of the guilty is the

prophet of its own misery. It is because its keen vision, outstripping all mortal *guesses*, darts past the line of destiny, pierces the veil, and gazes affrighted on the foreshadowed picture of the life to come, the reality of death eternal. It is because there is a sleeping voice, so deep down in the recesses of the soul, that though it be stifled almost all through life, yet, when it begins to speak, it upturns and troubles the whole ocean of being from its foundations; there is no more possibility of hushing those dread accents, of stilling that deep tumultuous roar, of quelling or quieting the clamour of a roused and angry conscience, than of stilling the resurrection trumpet. For even as that trumpet echoes through the vaults of death, Awake ye dead, and come to judgment, so does that voice, which is ready for utterance in every man's soul, reverberate through its recesses, startling forgotten and dead sins from their slumbers, and pealing beforehand the anticipated sentence.

Now it is on the ground of this dreadful prospect in Eternity that some men argue that the punishment of death cannot be right, because it sends an immortal soul unprepared into eternity. This is a very solemn consideration. But let us place it in the right light, and we shall find that it bears more in favour of punishment by death than against it. We shall find that in taking away this sanction from the majesty of law, we have deprived our criminal jurisprudence of its highest regenerating and sanative influence, and have left it more likely than ever to be the mere usher of impeni-

tent and unprepared men into the presence of their Judge. It may be very powerfully argued that the sentence of death is an event, which is more likely than the solitude of the longest life, to rouse up the conscience of a hardened sinner, and set him to crying earnestly for mercy from his God; and if that does not do it, it is almost certain that nothing else will. A man is not sentenced and hurried instantly to the gallows, but space is given for repentance, and if, under such circumstances, the criminal is not awakened, it is little likely that he ever would be. The sentence of death tends powerfully to impress the criminal with a sense of the exceeding enormity of his guilt; but in the case of the sentence of imprisonment for life, the pressure which the hand of death had laid upon the man's conscience is lightened; the power that brought him so near to the face of God is broken, and he shrinks back; the grasp of conviction is relaxed, the soul is again thrown upon its own resources, and its ingenuity is exercised in revolving the possibilities of escape. The time is long; there are many things that may happen; a pardon is possible; there are precedents that greatly favour the idea; a studied good behaviour may procure a mitigation of the sentence; at all events, the long indulged and powerful habit of religious procrastination need not be so hastily and violently broken up; there will be time enough for repentance.

Now it is precisely this grant of time enough for repentance, that is likely to keep the individual from

repenting at all; it is likely to fix in solitude that habit of procrastination, which has become so strong in active life, and so incorporated with the soul's nature by crime. The sacred declaration applies with great power, *Because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil.** In view of these truths we turn this argument back upon its propounders, believing that the practice of imprisonment for life, should it prevail to the exclusion of the punishment of death, would sometimes seal men for perdition in eternity, when the sentence of death might have proved the salvation of their souls.

The learned Grotius has noted and refuted this objection in a passage which, taken with the commentary that we shall append to it from actual experience in Newgate, merits consideration. "Some men are at fault with capital punishment, because with life all opportunity of repentance is cut off. But they well know that good magistrates have the greatest vigilance in this matter, that no criminal may be hurried to execution without ample time to acknowledge and heartily detest his sins; which late repentance, although by reason of death works do not follow it, may be accepted of God, as proves the example of the penitent and pardoned thief upon the cross. But if men say that a still longer period of life might produce a still deeper repentance, it may be answered that the experiment has often proved

* Eccles. 8:11.

otherwise: there have been those to whom that pithy and solemn sarcasm of Seneca might have been addressed, *We have one good thing more to offer you, and that is death:* and of whom those other words of the same author may be applied, that *in that way only can they cease to be wicked.* Which is what Eusebius had said before; since they cannot be reformed by any other means, let them, being thus freed from their chains, bid adieu to their villanies."*

We believe that Seneca's thought is a true one, and that there are cases in which death had been better than life for the spiritual interests of the prisoner. A striking confirmation of this is presented in Mr. Edward Gibbon Wakefield's experience in Newgate, detailed in his "Facts relating to the punishment of Death." He says that "the Reverend Mr. Cotton, the ordinary of Newgate, who has been chaplain of the jail for more than a dozen years, has often acknowledged to him, that he does not remember an instance of what he considered sincere conversion to religious sentiments, *except in prisoners who were executed.* A very great show of religious fervour is often made by prisoners, even from the moment of their entrance into Newgate, still more after they enter the cells. But in such cases, *when the punishment is finally settled at something less than death, the prisoner invariably behaves as if all his religion had been hypocrisy.*"

The objection we are here speaking of is urged

* Grotius: De Jure, Lib. II. cap. 20, § 12.

against capital punishment in this world on the ground of the truth of eternal punishment in the world to come. It is, indeed, no objection at all, except upon the undeniable reality of a future endless retribution. If there were no such retribution, and the unscriptural scheme of some religious speculators were true, then the punishment of crime in this world by death, far from being dreadful or severe, would be the highest favour the law could possibly confer, since it would transfer the criminal to a blissful existence from a life of shame and suffering. It should be added that the objection, if it possessed any weight at all, would lie as strong against the very first Divine ordination of capital punishment, as against the penal statutes of any modern government. Nay, it would be stronger, because the execution of the penalty of the law doubtless followed more rapidly upon the commission of the crime then, than it does now. But the objection can have no weight against the justice or propriety of a law established by Jehovah, however much force it may have as to the expediency of lengthening the time between the sentence and its execution. When space is given for repentance, and the guilty individual refuses to avail himself of it, then it is not so much the punishment, that hurries him unprepared into Eternity, as it is his own dreadful choice, the hardness and obstinacy of his own heart, which indeed, if under such circumstances it cannot be broken up, probably would remain for ever.

A very admirable notice of this objection appears in

the pages of a British periodical,* in which the great and venerable poet Wordsworth has brought the wisdom of seventy years, the power of an illustrious name, and the undiminished fire of his imagination to the illustration of this subject. The writer argues that "it is manifest that the sudden death of sinners enters into the dispensations of Providence; and whenever it appears to be good for mankind, according to the arrangements of Providence, that such death should be inflicted by human ministration, it is as false a humility, as it is a false humanity, and a false piety, for man to refuse to be the instrument. The unwillingness and the objection turns upon the alleged impiety of a sinner being cut off in his sins. Now assuming that we are all sinners, and assuming also the efficiency of the punishment for prevention,—say to the extent of preventing one half of the murders, which would be committed without it,—it follows that the state, by sparing to cut off A, who has murdered B, would be the occasion of C murdering D, and E murdering F; that is, of two persons being cut off in their sins by the hand of the murderer, instead of one by the hand of the executioner. This is an issue, which human judgment can distinctly reach and take account of, and in respect of which, therefore, God has devolved upon man a responsible agency."

This is true; it is excellent reasoning; and it not only meets the particular objection we have considered,

* London Quarterly Review, No. CXXXVII.

but it is a sufficient answer to those, who argue the expediency of abolishing capital punishment, from the unwillingness of juries to convict of a capital crime. In the case of the crime of murder, where the Divine Law is so clear, with both Providence and Conscience to support it, the true expediency would be, by a well-ordered sternness and immutability in the execution of the Law, to train the minds of all men to the perception and acknowledgment of the justice and necessity of its ultimate sanctions. This giving way to the disease of wrong feeling or mistaken opinion in the multitude, in cases of clear moral right and duty, because it is feared that otherwise the purposes of Law cannot be answered, is a proceeding of melancholy omen in any government. It is the wisdom of digging down the charcoal foundations of the Temple of Ephesus, in order to keep up the fires upon its altars.* It is "purchasing the sword with the loss of the arm that is to wield it." This is not the virtue of Prudence; nor can there be any genuine expediency, without lasting principles as its living root. Assuredly, if these be despised, "instead of state-wisdom we shall have state-craft, and for the talent of the governor the cleverness of an embarrassed spendthrift; which consists in tricks to shift off difficulties and dangers when they are close upon us, and to keep them at arm's length, but not in solid and grounded courses to preclude or subdue them. We must content ourselves

* Coleridge: The Friend. Essay V.

with expedient-makers; with fire engines against fires, life-boats against inundations: but NO HOUSES BUILT FIRE PROOF, NO DAMS THAT RISE ABOVE THE WATER MARK."*

* COLERIDGE: Essay IV, of the Landing Place.

CHAPTER XIII.

OCCASION OF THE PREJUDICE AGAINST CAPITAL PUNISHMENT.—INJURIOUS CONSEQUENCES OF THE SEVERITY OF SANGUINARY CODES.—DIFFERENCE BETWEEN THE REFORMATION OF PENAL CODES, AND THE ANNIHILATION OF PENALTY.—THE ABROGATION OF THE PUNISHMENT OF DEATH A PREMIUM ON THE CRIME OF MURDER.—RECKLESSNESS OF THE DESIRE OF CONCEALMENT.

It is a question that very naturally forces itself upon the mind, assuming the fact of the divine original of capital punishment, Whence should have arisen so violent a prejudice in some quarters against it? In this chapter we shall state only the reason connected with this part of our argument, which we take to be the lavish use and consequently the great abuse, under many governments, of the highest, most awful, and most solemn sanction of the law. Having a sword put into their hands, men in power, like little children, have loved to flourish it on every occasion. If legislators had restricted themselves to the application of the original ordinance of Jehovah, we believe there would have arisen no more question in regard to the justice and expediency of that law, than in regard to the authority of the very first commandment in the decalogue. Modern codes have been tyrannous and sanguinary; and the annexation of the punishment by death to minor offences,

in codes of law notoriously severe, has begotten a deep sentiment of injustice, which the mind has afterwards connected with the punishment by death in any case. This has led criminals to such disregard and contempt of it, and juries to such frequent sympathy with offenders, and such connivance at their escape, acquitting them sometimes both against law and evidence; and it has trained the public feeling to such compassion for criminals arraigned and condemned under such laws, as if they were persecuted wretches; that some writers have seemed to possess strong ground in their plea for the abrogation of the penalty. A law which, by extending the punishment of death to many offences, occasions murders to avoid death, must either become a dead letter where it ought to be applied, or, by such a spectacle, must weaken the power of the penalty of death, even in countries where these injurious and notorious abuses of it have not been prevalent.

Now it is one of the most difficult things in the world for men to divest themselves of a prejudice so engendered, and to look dispassionately and without blindness at the authority, justice, and expediency of punishment by death for murder. It is undeniable that modern penal codes in their lavish application of the last penalty of law have well merited the accusation of savageness and barbarity; while the Jewish code, against which so many ignorant and ill-timed censures have been directed, is incomparably superior in the equity and gentleness of its provisions. In that code, the penalty of

death was never permitted for any mere invasion of property.*

During the reign of Henry VIII. 72,000 persons were punished by death in England, or about 2,000 every year; and in the time of Judge Blackstone one hundred and sixty different species of crime were punishable with death in that country! Such legislation as this does but increase the number of offenders; for in the words of the Judge himself, "The injured party, through compassion, will often forbear prosecution; juries, through compassion, will forget their oaths, and either acquit the guilty, or mitigate the nature of the offence; and judges, through compassion, will respite one half the convicts, and recommend them to the royal mercy. Among so many chances of escape, the needy and hardened offender, overlooking the multitude who suffer, boldly engages in some desperate attempt to relieve his wants or supply his vices; and if, unexpectedly, the hand of justice overtakes him, he deems himself peculiarly unfortunate in falling at last a sacrifice to laws, which long impunity had taught him to contemn."†

Now we are so far from advocating an unreasonable severity of legislation, that we hail with delight the

* Save one; the iniquitous invasion and assumption of property in man. "He that stealeth a man and selleth him, or if he be found in his hands, he shall surely be put to death." Ex. 21 : 16.

† BLACKSTONE: Commentaries on the Laws of England. Book IV. ch. 1.

progress of Christian Philanthropy in rendering it both odious and unavailing; we honour and admire as of the highest character the benevolence of those, who have laboured for the reformation of such codes. This is very different from that crude and wholesale spirit of revolution and experiment which would abolish utterly from human legislation a solemn and divinely authorized statute, denying its application, even to that one crime, for the punishment and prevention of which it was promulgated directly by Jehovah. Let us try the experiment, say some men, and see how it will work. *Experimentum de corpore vili*, says Mr. Burke, is a good rule; but experiments upon so sacred an interest as the constitution of the country and the religious foundations of Law, are of another character. A spirit of reformation is never more consistent with itself, than when it refuses to be rendered the means of destruction.*

The Prison Discipline Society of our own country have perhaps gone more thoroughly and extensively into the investigation of this subject than has been done anywhere else in the world. The conclusion to which they are brought will be sustained, we believe, by the whole world's experience, "that the punishment of death for murder could not be abolished with safety; and that the Law of God seems holy, just, and good, Whoso sheddeth man's blood, by man shall his blood be shed." Experience in both ways, in the abrogation as

* Burke: Appeal from the new to the old Whigs. Works, Vol III. 358.

well as existence of this statute, has sustained its wisdom and proved its necessity. The experiments made under the reign of the Empress Catherine of Russia in the North, and through the influence of the Marquis Beccaria, under Leopold of Tuscany in the South of Europe have been quoted with confidence in favour of its abrogation. Their continuance was too short for any unquestioned conclusions to be drawn from them; and inasmuch as they were made in states where the penal code had been dreadfully and unrighteously severe, no conclusion against the penalty of death for murder could be legitimate; and the whole happy result (which no just mind can doubt) of the abrogation of the penalty of death for minor offences, to which it ought never to have been annexed, has been appealed to as an argument for annihilating that penalty utterly and entirely from all possible offences, not even excepting the crime for which it has been solemnly enacted by Jehovah! No experiment of this kind could be a fair one, unless it were tried in a country where the criminal code has not been severe, and where the punishment by death has been restricted to the crime for which the Divine Legislation has made it obligatory; neither in such a case could it be conclusive, unless tried in the long run, and through all the currents and circumstances of society. Accordingly the indisputable authority of the Conversations-Lexicon in Germany is adduced on the other side to prove that the results of the European experiments were unsatisfactory; for it is declared in that work that

"even in those states where, from a one-sided benevolence, the governments wished to abolish capital punishment, they were compelled again to avail themselves of it, and that on the ground that in the opinion of men death is the greatest of evils, in preference to which they would willingly undergo the most laborious life with some hope of escape from it, because the *death-punishment* is the most terrible of penalties."*

There can be no doubt that the undue frequency of the punishment by death, through its abuse in application to minor offences, especially if executions come thus to be familiar to the public mind, does inevitably tend to lower the estimate of human life both in the view of the criminal and of the community. On the other hand, the penalty of death for murder, inflicted by a government that reserves it for this awful crime,—the penalty of death by the government for the taking away of life by the individual,—is admirably adapted at once to increase men's sense of the value of human life, and to deepen their conviction that the penalty of death is incalculably more dreadful than any other punishment. For the restraint of crime, it adds both to the power of the government, and to the more invisible and awful efficacy of the common conscience of mankind.

To punish by death for the stealing of a horse or a sheep, as in England, or for other minor offences there or elsewhere, is in effect to throw in the way of the

* Biblical Repository: Vol. X. An admirable article by Professor S. S. Schmucker, D. D.

criminal a temptation to murder for the concealment of crime. It has been said with truth that we had better have ten robberies without murder, than one robbery with murder; so that it would be better, even if minor offences should increase, that this last and most dreadful offence should be made to decrease, by taking the punishment of death from the former, and reserving it only for the latter. Blackstone remarks that "in France the punishment of robbery, either with or without murder, is the same: hence it is that though perhaps they are therefore subject to fewer robberies, yet they never rob, but they also murder. In China, murderers are cut to pieces, but robbers not; hence, in that country they never murder on the highway, though they often rob."* On the same principle it has been found in the State of Pennsylvania that the substitution of imprisonment instead of death for the punishment of highway robbery was followed by a sensible diminution of the murders. When highway robbery and murder were alike punishable by death then the crime of murder was more frequent; obviously because, if a man must be hung for robbery, his punishment would be no worse for the murder, while by committing this crime, he might entirely escape.

On the other hand, this same argument is still more powerful against taking away the penalty of death for murder. By putting this crime on a level with others, we tempt men to commit it for the same inducements;

* Blackstone: Book IV. ch. 1.

we make murderers out of common thieves and robbers; obviously for the same reason; if a man must be imprisoned for robbery, his punishment will be no worse for murder, and by committing this crime he may entirely escape. In abrogating the penalty of death, we secure the murderer's life, and do in effect set a premium upon the crime of murder. No worse consequences will follow, the midnight robber may argue, for even if the murder should be discovered, I am safe against being killed, and by the removal of all witnesses I may succeed in burying up all traces of my crime forever. In effect the abrogation of this statute would tend to arm every lower passion, under the influence of which a man commits the lower degrees of crime, with the power and sharpness, the dreadful ferocity and decision of the stronger impulses, that ever lead him to the commission of murder. The desire of concealment would be perfectly reckless in its measures.

One of the main pillars of our security against the outbreakings of human depravity would therefore be taken away, if this statute were abolished. Assuredly, men would not feel more secure, if compelled to travel in lonely places with money, if alone in the streets at midnight, to remember that while they themselves are exposed defenceless to the steel of the assassin, the fear of death is entirely removed from the murderer. A statute is framed to protect the murderer's life, but the life of his victim is left unprotected! And if, by the abrogation of the penalty of death, the horror with which the crime

of murder is regarded should be so gradually diminished, that the keenness of pursuit and the requisite plainness of evidence should fail, then would private revenge spring up in all its terrors, and the angry justice of friends, or the passions of the mob, as in some parts of our own country, would take by force that satisfaction, which the majesty of law fails or refuses to secure.

This is the forcible reasoning in that sonnet of Mr. Wordsworth on the scale of retribution for crime, and the danger of striking out its highest sanction.

> Fit retribution, by the moral code
> Determined, lies beyond the state's embrace,
> Yet, as she may, for each peculiar case,
> She plants well measured terrors in the road
> Of wrongful acts. Downward it is, and broad;
> And the main fear once doomed to banishment,
> Far oftener then, bad ushering worse event,
> Blood would be spilt, that in his dark abode
> Crime might lie better hid. And should the change
> Take from the horror due to a foul deed,
> Pursuit and evidence so far must fail,
> And, guilt escaping, Passion then might plead
> In angry spirits for her old free range,
> And the wild justice of Revenge prevail.

One consideration remains to be added in the matter of expediency, an important one, which indeed might be regarded in itself alone as settling the question; namely, the effect which the abolition of capital punishment would have upon Prison Discipline. There are many

desperate villains now in prison for the crime of murder. What additional punishment have they to dread, were they to rise and kill their keepers? How readily would they do this, if a fair hope were thus presented of escaping! And who could be found willing to act as keeper of a prison, if his life were not protected from the assaults of men, whose hands are already imbued in human blood, by something which they dread more, than the punishment they are already enduring?

CHAPTER XIV.

PROPOSED PLAN OF IMPRISONMENT FOR LIFE, INSTEAD OF THE PENALTY OF DEATH, CONSIDERED.

It may be said with truth that we do not look at this subject fairly and fully, unless we give an impartial consideration to the alternative proposed, in the place of capital punishment abolished. We are willing to take it in its best aspect. Every philanthropist will rejoice, if the attempted abrogation of the punishment of death shall have occasioned a plan of imprisonment for life, by which our legislators, without destroying the last sanction of the law in the penalty of death for murder, shall have for the next grade of offences a punishment as efficacious in restraining men from crime, and as salutary in reforming them for Eternity, as the punishment of death has proved to be in reference to the crime of murder. The punishment of imprisonment for life, as most generally executed, is little better than a name. In the State of New York, the average length of time spent in prison by those criminals, who have been sentenced to imprisonment for life, has been six years!

On the other hand, the effect of solitary confinement, as that too has been ordinarily managed, has proved so

terrible to the mind, so disastrous to the individual's nature, that it would be a strange philanthropy, which should prefer the slow execution of the wretched criminal in *that* way, to his execution by the gallows or the scaffold. There are some fearful proofs on record, and that even up to the present year, of the consequences of such treatment, in the number of persons in France, who, so imprisoned, have become insane. This mode of reforming criminals, and preparing them for heaven by insanity, no man will contend for.

But let the plan proposed be open to none of these objections; let the power, and so the possibility of pardon be removed, that the criminal may feel assured his sentence is for life; and let all the appliances of religion and of education be interwoven with the scheme, and brought to bear upon the offender; still, for that purpose which is the great object of penalty in this world, the prevention of crime in others, and the welfare of society, it cannot possibly supply the place of death. It may be a good punishment, admirably constituted and applied, and especially good for the offender, but yet altogether insufficient in its energy of terror and power of restraint. In fact, the more humane you make it, the more you relieve it of its terrors; and although the purpose of terror is not to be gained at the expense of humanity, and a spirit of revenge is never to be indulged in the punishment of the criminal, yet it would be an ill-judged benevolence indeed, which, forgetting the design of penalty, should both take from it all immediate fearfulness by the secu-

rity of life, and make, at the same time, a comfortable resting place for life's continuance.

The most important argument urged in favour of imprisonment instead of death, is the superior opportunity it is alleged to give for the reformation of the offender. To prevent this good result in such a case, there comes in, first, the hope of escape, which the fact of life in prospect always nourishes; second, the habit of procrastination, which the continuance of life always confirms; and third, the absence of any consideration of immediate danger, so requisite to rouse a mind hardened by crime out of its slumbers. Putting these things in contrast with the power of conviction, and the power of awakening, assumed over the conscience by the near approach of death, we think few minds would hesitate as to the superior efficacy of this last mode of punishment for the final reformation and well-being of the criminal. But if such superior efficacy be probable, then the argument of benevolence to the offender, as well as the good of society, truly and properly urged, would render the appointment of death for the penalty of his crime, (assuming it, as in the case of murder, to be an act of justice,) the highest act of mercy also.

CHAPTER XV.

TENDENCY OF THE COMMON REASONINGS AGAINST CAPITAL PUNISHMENT, TO WEAKEN THE SANCTIONS OF THE DIVINE GOVERNMENT. —RETRIBUTIVE JUSTICE A REALITY.—PROPHETIC ASPECT OF THE PENALTY OF DEATH FOR MURDER.—POWER AND SOLEMNITY OF THE ARGUMENT FROM ANALOGY.—CONCLUSION.

THE argument from Expediency is one that some men love to dwell upon too exclusively; but in such exclusiveness we are not fond of it. Not because we distrust it; it is powerful, and in its legitimate place, correct; but because, by a sort of Popish tendency, it is so often hoisted out of its legitimate place, to lord it over the word of God, the reason and the conscience. In the present instance, taken alone, it tends to lower the subject. There are higher grounds to rest upon, than any that mere expediency understands or notices. Even in the penal inflictions of this world we see an image of the Divine Justice, which, though inadequate, is awful and grand.

Some men in their reasonings seem unwilling to admit of such a reality as Justice apart from Expediency. They do not even include it as in any way an end in their philosophy of penal inflictions. They would have no such thing as Justice, retributive Justice, if it were

not to deter men from crime. This mistake lies at the foundation of all false reasonings on this subject: it would exclude Capital Punishment from the universe, from the government of God. There is such a thing as Justice, retributive Justice, besides and apart from the purpose of security against crime, or the necessity of the guardianship of society and the universe. The idea is in our souls; the prophecy is in our consciences; the revelation is in God's word; the REALITY is in Eternity!

There is a just penalty, just in itself, though we never rise to it here: and no man will probably say, when a murderer is hung for his crime, that this was all he deserved, though all that society could inflict. The common proverb, Hanging is too good for him, shows a deep under-current of conviction in some cases as to the nature of Justice. What a man deserves he never receives here; if he did, this would be the place of final judgment, this the scene of final retribution. The utmost that can be done here is but a shadowing forth of the nature of Justice, an approximation to reality. There is an Image, a Miniature, a Prophecy of that which is to come; and as such we should regard human justice; not a creature of expediency merely, but an image and a humble imitator of Eternal Truth. "Though to give timely warning and deter," remarks Mr. Wordsworth,

> Though to give timely warning and deter
> Is one great aim of Penalty, extend
> Thy mental vision farther, and ascend
> Far higher, else full surely thou shalt err.

> What is a State? The wise behold in her
> A creature born of Time, that keeps one eye
> Fixed on the Statutes of Eternity,
> To which her judgments reverently defer.

As such, she speaks powerfully to the conscience; her voice is glorious; nor would we have that voice hushed or weakened.

It is one of the strongest objections which a believer in Christianity must feel to the whole reasonings of some men on this subject, that they tend to weaken and destroy the sanctions not only of the human government, but of the Divine. The same false ideas of benevolence, the same sickly and ill-placed tenderness, the same false sentimentality and compassion, that lead men to exercise a deeper sympathy with the murderer, brought to his trial, than with the murdered man, stricken down and thrust into an untimely grave; the same habits of thought and feeling, that lead them to dwell with more of pity and complacency upon the guilty man, than of hatred and abhorrence upon the guilt; are transferred to the case of criminals under the Divine government, and lead men to argue that it is impossible that a God of Mercy can ever execute the penalty of Eternal Death upon any offender. All this leads men to pity the sinner and forget the sin; to take the part of the sinner against God, and to forget God's insulted holiness, his abused goodness, the violated majesty of his Law, the injury against the universe. The incalculable evil of sin is but little noted, and instead of a spontaneous defence

of the Law against the contemner of its majesty and goodness, the goodness of God itself is challenged and questioned, in reference to the very provisions, by which the holiness and happiness of the universe are secured.

Doubtless, such reasoning would have been far more familiar, more universal than it is, if God had never promulgated the enactment connecting the penalty of death with the crime of murder. In establishing this statute, he has done much to render the judgment of the natural conscience of mankind consentaneous with the voice of his word, in regard to the punishment of sin in Eternity. If this sanction had never been annexed to human law, it would have been more difficult than it now is to enforce upon the conscience the sanctions of the Divine Law; there would have been more of infidelity in regard to those sanctions; a more universal effort to deny and reproach them as false, malignant, and inconsistent with the Divine Benevolence. But the sternness of Justice in the divine establishment of human government has prepared the way for right ideas in regard to the Divine government; it has assailed that false reasoning beforehand; it has proved a universal prophet in men's hearts of the principles on which God will deal with incorrigible sinners in Eternity. The argument is one from analogy, and all men feel it; and the universal affirmative response in all ages to the justice and propriety of the dreadful penalty of death for murder, against him who aims at the existence of the human government, is accompanied by a response as irresistible to the jus-

tice of the sentence of eternal death against the contemner of the Divine government.

God in his providence, as well as in his word, is an infinitely wise instructor of his creatures. He has trained the common conscience of mankind on some fundamental principles, essential to the safety of the universe, so powerfully, that the utmost efforts of infidelity against a revelation that contains those principles can effect little more than a manifestation of hatred; can do little or nothing to shake the inmost convictions of the human mind, to upset the established foundations of human opinion, to alter the common elements of judgment, to make the voice of the human conscience prophesy falsely. What God did in regard to the atonement by the institution of sacrifices, producing an expectation of the atonement, and preparing the way for a belief in it, he hath done in regard to the retributive principles of the divine government, by annexing the penalty of death to the laws of a human government, producing an expectation of the nature of the divine justice, and preparing for the response of faith to the terms of its revelation.

These are the grounds on which we are content to rest this argument. We stand upon eternal principles. We ask for the final causes of this enactment, and we find them not only in the exigencies of human society, but in the eternal, fundamental principles of the Divine government. It is by the light of such principles that we desire to judge all human institutions; and it is a miniature or shadow of such principles that we expect to find in all

ordinances and forms in this world, that are established by divine authority; a family likeness, if we may so speak, between such laws in this world, and what Plato, with almost supernatural wisdom, hath called THEIR SISTERS, THE LAWS IN THE OTHER WORLD.* For according to that remark of the *son* of Sirach in the book of Ecclesiasticus, on *which* Bishop Butler erected the mighty superstructure of his Analogy of Religion natural and revealed, "All things are double one against another; and he hath made nothing imperfect."† He hath set one thing over against another. He hath put a sword into the hands of the human government; a sword is also wielded in the Divine government. We see its glitter here; it is the foreboding of its flashing terrors in Eternity. For "God judgeth the righteous, and God is angry with the wicked every day. If he turn not, he will whet his glittering sword; he hath bent his bow and made it ready. For it is written, Vengeance is mine, I will repay, saith the Lord."

There is deep and awful truth in these passages, merciful in their sternness, blessed in their salutary power

* The laws in this world are represented as speaking to their enemies, "We shall fill you with trouble whilst you live, and when you mingle with the dead, our Sisters, the Laws of Hell, will give you a fearful reception, knowing that you endeavoured to ruin us." Ἡμεῖς τέ σοι χαλεπανοῦμεν ζῶντι καὶ ἐκεῖ οἱ ἡμέτεροι ἀδελφοὶ οἱ ἐν Ἅιδου νόμοι οὐκ εὐμενῶς σε ὑποδεξονται, εἰδότες ὅτι καὶ ἡμᾶς ἐπεχείρησας ἀπολέσαι το σον μέρος. The Dialogues of Plato: ΚΡΙΤΩΝ: § 16.

† Ecclesiasticus 42: 24.

of warning. Every man's conscience responds to them, and into the very elements of language God in his providence has so interwoven the ideas contained in them, that to use the English tongue itself, is to be familiar with their meaning.

There is a word, from which men, beneath the power of a guilty conscience, shrink back, pale and affrighted. There are those, who would expunge, if they could, that word from the language, and its idea from all creeds of belief and codes of law, penal, moral, theological— RETRIBUTION! If the character of that region of wo, over the gates of which the poet Dante affixed so terrible an inscription:

> Lasciate ogni speranza, voi ch' entrate:
> All hope abandon, ye who enter here!*

could be condensed into one word, it would be this,— RETRIBUTION, not Expediency. Retribution itself is indeed expedient; it is the highest expediency; but that

* DANTE. Canto III. The whole of this celebrated inscription, translated by Cary, is as follows:

> "Through me you pass into the city of wo:
> Through me you pass into eternal pain:
> Through me among the people lost for aye.
> Justice the founder of my fabric moved:
> To rear me was the task of power divine,
> Supremest wisdom, and primeval love.
> Before me things create were none, save things
> Eternal, and eternal I endure.
> All hope abandon, ye who enter here."

is not God's reason for it. We believe that in the nature of things, no injury can die, no wrong-doing pass without recompense. There is this provision in the universe: *Evil felt balances evil committed.* There is no escape from this tremendous law; none, but in the blood of Jesus Christ, which cleanseth from all sin; none, but in the sacrifice of Christ, which maketh an atonement; none, but by that act of Faith in Christ, in which the soul, personally resting upon him for relief, pardon, and shelter, finds itself no more under Law, with its stern, immitigable PENALTY, but under Grace, with its Heaven of holiness and blessedness now and for ever. Now do we praise God, both for such a Salvation, and for such righteous terrors of the Law, as may teach guilty men their need of it, and constrain them to flee to it.

BLESSING, AND HONOUR, AND GLORY, AND POWER, BE UNTO HIM THAT SITTETH UPON THE THRONE, AND UNTO THE LAMB FOR EVER AND EVER.

ESSAYS ON PUNISHMENT BY DEATH.

PART THIRD.

ARGUMENT

IN REPLY TO

J. L. O'SULLIVAN, ESQ.,

DURING THE DEBATE

IN THE BROADWAY TABERNACLE

IN 1843.

INTRODUCTION.

Although it will be found that some points in the following argument are somewhat occupied and dealt with in the preceding pages, yet it has been deemed best to let it stand with but little abridgment or alteration. So many applications have been made to the author for copies of the argument in the debate, that, even at the hazard of some little repetition, or the appearance of it, it is preserved nearly as it was first published. In its statistics it is perfectly impregnable, no reply having been able to destroy the authority of the Belgian Minister of Justice in his official report.

The statistical argument from the tables in that Report of M. Ernst, has been examined anew with great care. No deficiency can be found in it. The attempt to set it aside or to evade its force are fruitless. Neither suppositions nor probabilities will answer against exact criminal statistics under the hand of the Minister of Justice addressing the king.

DEBATES ON PUNISHMENT BY DEATH.

ARGUMENT OF THE FIRST EVENING.

§ 1. THE ORDINANCE IN GENESIS INTENDED AS A COMMAND.

For the interpretation of this ordinance as a command, we have the authority, first, of the greatest commentators that have ever appeared in the world. Among them I shall mention the names of Hammond, Grotius, Calvin, Matthew Henry, Michaelis, and Rosenmueller. Second, for the particular construction of the passage, according to the laws of the Hebrew language, we have the authority of the greatest Hebrew scholars that the world has ever known. If you will turn to the Hebrew grammars of Gesenius, Stuart, or Nordheimer, you will find that for the imperative in this case no other form could be used but that which is used, by man *shall* his blood be shed. The Hebrew imperative has no third person, and the future is always used in its stead. But not only so, the future supplies the form of the imperative throughout the whole decalogue, not one of the precepts of which is any more mandatory in its form than

this ordinance. But this is not all: I can bring you a parallel passage from the book of Proverbs, (xxviii. 17,) by which you may see that even if you put aside the imperative form, the assertion in the ordinance is still of the nature of an injunction. "The man that doeth violence to the blood of any person shall flee to the pit; let no man stay him." That is, he shall immediately die. It cannot mean, he *will* flee to the pit, for he certainly will not if he can help it; but, he *shall* do this; he shall immediately be cut off; and to make this certain, it is added, Let no man stay him;—let no man interfere to save him;—let no man prevent, or seek to prevent, that immediate destruction, which is the penalty of his crime.

§ 2. METHODS PROPOSED FOR EVADING THE FORCE OF THIS ORDINANCE.

It certainly is not wonderful that the advocates for the abolition of Capital Punishment should wish to evade the force of this statute: it is the citadel of our argument, commanding and sweeping the whole subject. All else is a mere guerilla warfare, if you cannot carry this entrenchment. In the matter of utility and expediency, we are in as strong possession of the ground as in the matter of the Scriptures and theology, and this I propose to show conclusively. The meaning of this statute is first to be settled, and defended from objections. Both the context and the interpretation show manifestly that it is a command, an injunction, a law. Two methods have been proposed for its annihilation; first, to render it

whatsoever sheddeth man's blood, and to restrict its application to beasts; and second, to treat it as a mere prediction. I shall show the absurdity of these positions, and then proceed in my argument. The first position is impossible in the interpretation, since, if you even rendered it, *whatsoever*, it includes both man and beast. But it is still more absurd in its nature and consequences; for it amounts to this; that God, at the opening of the world, and in regard to the crime of murder, is legislating for brutes and not for men! If a wild beast, driven by hunger, or hunted and provoked, kills a man, capital punishment shall be executed upon him. If a man murders his fellow-man, no blood must be exacted. Suppose, then, (to use a forcible illustration for which I am indebted to the kindness of a friend,) a malicious neighbour in that early age to have set a trained blood-hound on a man whose life he was seeking; and the obedient animal, true to his own nature, and an admirable instrument of murder for his master, takes the life-blood of his victim. Must the man be arraigned and executed on the charge of murder? By no means, say the humane expositors of this law of God; that would be to add murder to murder. Let the man escape, but the dog must be hung; the ferocious brute, that knew no better than instinctively to do what his master bade him, and so to slay a man made in the image of God, deserves to die. Let the court proceed to condemn the blood-thirsty quadruped; and, to show the sacredness of human life, and protect society from the incursions of

wild beasts, let the creature be solemnly executed; and let it be done in the sight of all the other beasts and bloodhounds you can summon to the spectacle; for the statute is, "*Whatsoever* sheddeth man's blood, by man shall *that beast's* blood be shed!"

Perhaps now you will choose to abandon this ground, and admitting that it refers to man, you contend that it is merely a prediction. Now mark the consequences. It is either manifestly false, and has not been fulfilled, or the prediction itself has caused its own fulfilment, and must have been given for this purpose. But supposing it to be a prediction, is it not a little singular that you yourself are opposing its fulfilment? If it be really what you say, a prediction of Jehovah, do you believe that you can prevent its fulfilment? Certainly, if I thought God had predicted that every murderer should be punished with death, I should not dream of being able to prevent it. Your efforts against capital punishment are unavailing, if God has here predicted that capital punishment shall prevail. But not only so, they are presumptuously irreligious. The Emperor Julian, the apostate, to show his spite against Christianity, and to falsify one of its most important predictions, tried to build again the walls and temple of Jerusalem, but the hand of Heaven prevented him. You are trying to destroy an institution, which you yourself contend that God has predicted shall stand.

God either meant that the prediction should be fulfilled, or he did not. If he did, you are opposing God's in-

tention, and endeavouring to prove him a liar. If you say that he did not mean it should be fulfilled, you make the sentence a nullity of idle words, and God a trifler. Moreover, you contend that capital punishment is wrong; in effect, you argue that it is a sin. Here, then, consequently, is a sentence from Jehovah, which you say is a prediction concerning the prevalence of a sin; but which is so worded, that the whole world for four thousand years have considered it a command, and acted upon it; the Hebrews themselves, under the very guidance of God, taking it as a law, and acting accordingly. Assuredly this supposes in the framer of such a prediction either wilful deception or the most astounding stupidity. To put it in a strong light, let me ask what would you think, if God, intending to forbid stealing, had predicted that men will steal, but had uttered this prediction in such a manner, that men for four thousand years should have interpreted it as a command to steal, and acted accordingly, the mistake never once being corrected in all after legislation! But, indeed, the efforts to evade this statute, involve absurdities in every direction.

§ 3. PROOF OF THE UNIVERSAL APPLICATION, AND UNLIMITED DURATION OF THIS STATUTE.

THREE things are noted in this statute; its PRIORITY TO ALL LEGISLATION; ITS COMPREHENSIVENESS; AND ITS UNLIMITED DURATION. It comes immediately and solely from God. It was meant for all mankind. Its authority continues as long as the race. As it is solely from

God, God only could repeal it. He never has repealed it, and it is just as binding upon us, as it was upon the generation to whom it was first given. If you deny its application to us, to nations and governments now, you must point out the place where its application stops. Is it in the first generation, when the scarcity of men, and their relationship with one another made it less necessary; or is it at an after period, when men and crimes increased together, so that every year that the race lived made it more necessary? It is the first law in the world; but not only so, it is the first law of God in the world. What subject would he be likely to legislate upon in such circumstances? One of temporary, transitory importance, or one which, beginning with the race, should last with the race? The law, as well as the covenant connected with it, was intended, beyond all doubt, for all mankind; you cannot stand at any point in the stream of time, or the history of man, and tell me, There this legislation stops; you can no more separate its obligation now, from its obligation in the age of Noah, than you can stand at any point in the river that supplies this city with pure water, and tell me what particular drops find their way into the reservoir, and what not.

It is not to be denied that the covenant of God with Noah on this occasion covers the whole transaction; including the promise of a blessing, the grant of animal food, the ordinance in question, the command to be fruitful and multiply, and the assurance that there should be no future deluge. Now of this covenant God expressly

says that it was meant for perpetual generations, as long as the world should stand, an everlasting covenant.

The comprehensive application and perpetual obligation of this law, for Noah, and his posterity to the end of time, unless revoked by the Divine Legislator, are as unquestionable as the right to eat animal food. This right was granted to Noah and his posterity for all mankind to the end of time, unless expressly revoked by the Divine Legislator. Does any man doubt it? Does any man believe that the grant to eat animal food was made only to Noah, or only to that generation, or only to the Hebrews? But the same arguments, which would throw off the binding force of this statute, would destroy the permissive force of this grant. You cannot show from this passage, that it is lawful for us to eat animal food, if you cannot also show that it is binding on us to punish the murderer with death. You cannot point out, in God's after-legislation, any statute, which either revokes the grant or repeals the obligation. If its obligation ceased at any time, or with any race, *when* did it cease, and how did men know it? That the law continued to be fulfilled, we know from all history, both sacred and profane; when, or how, or by what agency did it cease to be a law, though its fulfilment continued?

In the terms of the law itself, there is positive proof that it remains, and is binding now. The common sense of law lays down a maxim, which no lawyer would set aside, on which this permanence may be established. It is this—*lex stat dum ratio manet;* the law stands while

the reason remains. What was the reason for this law? Does that reason remain? The reason is connected *with* the law, and is given in God's own words; *for in the image of God made he man.* Does this reason still exist? Then assuredly, the law is still in force; for, however *men* may act without reason, and change without reason, God does not. The law remains while the reason remains.

This was in part the meaning of our Saviour, when he said that not one jot or tittle should pass from the law, till all should be fulfilled; till its purpose should have been accomplished, or the reason should have ceased to exist. Are we made in the image of God? Then, on the strictest principles of reasoning, this law is still in force. A government now, is as much bound to put to death the man who kills his fellow-man, as the government, of whatever nature you choose to suppose it, to sustain the authority of which this law was first promulgated. A government attempting to set aside or do away this law, transcends its sphere; it legislates against the divine legislation. It has no more right to do this than it has to abrogate the law against stealing. It is as great a solecism to commence the reformation of human legislation with the abrogation of this law, as it would be for a preacher of the gospel to commence the reformation of human society, by denying a divine revelation.

This law is as obligatory as any statute in the decalogue. Its authority, like that of the decalogue, is demonstrable, because the precept is a moral duty; a

moral duty to society, a duty which a benevolent and wise regard to the interests of society renders binding. It is just as demonstrable as the authority of the principle, "thou shalt love thy neighbour as thyself." But it has one point in its favour over and above the decalogue; because it was addressed *formally* to all mankind. The decalogue was *meant* for all mankind unquestionably; its essential nature, as necessary for man's highest interests, proves this. The *prefix* to the decalogue was limited; Hear, O Israel. The prefix to this statute against murder, was addressed to all the inhabitants of the world. In fact, this is one of the laws of the decalogue itself, with an invariable penalty stated. It is neither more nor less than the law, Thou shalt not kill, with the penalty for killing fixed by the lawgiver. This statute to Noah, and every statute in the decalogue, stands on the same basis of moral goodness, by the same moral necessity. The statute springs out of what I may call the necessity of love—the necessity of watching over and protecting the welfare of society—the necessity of protecting the innocent against the passions of the depraved. The nature of goodness compelled the promulgation of this law. But a law is nothing without a penalty; and the same goodness that necessitates the law, necessitates also the penalty and the enforcement.

§ 4. PROOF AND ILLUSTRATION OF THE MEANING OF THIS STATUTE FROM THE SUCCEEDING LEGISLATION AMONG THE HEBREWS.

Suppose now, that an intelligent being, having heard the first promulgation of this law to Noah, should have been transported to some distant quarter of the universe, not to return to this world for the space of twelve hundred years. Would he expect to find this statute in existence? And if he did find it in existence, with other similar statutes founded on it, would not this be an additional proof, if such were needed, of the universal and perpetual intent and obligation of this law? Let us then take the place of this supposed angelic being, and visit the world after twelve hundred years have passed away. We will not go to any barbarous, inhuman part of it, for you might say that such a race had interpreted this statute according to their own cruelty and ignorance. There is a bright spot on the earth's dark surface; you may know it by the mountain cedars, and the groves of palm trees. A supernatural radiance rests upon it, and a wall of light infolds and circles it, reaching from earth to heaven. There is a temple there, but in it no idol is to be found; but only the sublime presence of the invisible God! Now let us open a book of the legislative wisdom of this elevated and favoured people. "Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses. Ye shall take no satisfaction for the life of a murderer which is guilty of death; but he shall surely be put to death. So ye shall not pollute

the land wherein ye are ; for blood, it defileth the land ; and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it. Defile not therefore the land which ye shall inhabit, wherein I dwell ; for I the Lord dwell among the children of Israel." Num. xxxv. 30–34. Does this look like the abrogation of this law, or the cessation of its binding power ? Nay, is it not the same law repromulgated far more explicitly, with the same reason annexed ? "I the Lord dwell among the children of Israel." How remarkable is this language ! How remarkable the inference ! The more closely and nearly God condescends to dwell on earth among his creatures, the more invariably must this law of death to the murderer be executed !

Here I wish it to be distinctly understood, that in all reference to the Mosaic institutions so called, I make it not to gain from them a sanction for this law, but simply to show the light which they throw upon it. The law would stand upon the same unquestionable authority that it does now, if the whole mass of revelation between the book of Genesis and the gospel of Matthew were annihilated. But the *illustrative* character of the evidence is wonderful. It is precisely like that which would be gained for any human law, by tracing in accordance with it a whole body of precedents and conclusions uninterrupted and unquestioned for hundreds of years.

There is a great distinction between the common law of the world expressed to Noah, and local enactments

for particular reasons among the Hebrews. By those enactments we are not bound. The authority of the decalogue we do not put merely upon the fact that God gave it to the Jews, but that its principles are eternal, universal.

But perhaps you will say, This after all is but the childhood of society; the race is only struggling towards the perfection of humanity; these are but tentative processes in legislation, which must wait to be perfected in the nineteenth century. Let us then leave the world to its progress a thousand years longer. Where are we now? and what is the condition of humanity? The Creator and Saviour of the world himself is there; God manifest in the flesh, the Wisdom and the love of Eternity, shedding its radiance through the veil of human nature, adopted in mercy to mankind. His words are all those of love, and God is love; and yet he speaks of death as well as life, of wrath as well as mercy, and threatens the one while he promises the other. You find at this period of our Saviour's abode in Judea, a great abuse of the whole law with all its penalties, for the purposes of private revenge. Does the present Lawgiver abrogate this statute? No! He condemns most severely the *spirit of revenge*, but *confirms* the law, and corrects the mistakes of any who supposed he would destroy it. "Think not that I am come to destroy the law or the prophets; I am not come to destroy but to fulfil."

§ 5. PROOF AND ILLUSTRATION FROM THE EPISTLE TO THE ROMANS, AND FROM PAUL'S EXAMPLE.

Step now, thirty years after the crucifixion of this blessed Being, into the zenith of civilization and splendour, the capital of the world, and there listen to a new voice of revelation on this subject. "Let every soul be subject unto the higher powers. For there is no power but of God; the powers that be are ordained of God. Whosoever therefore resisteth the power, resisteth the ordinance of God; and they that resist shall receive to themselves damnation. For rulers are not a terror to good works, but to the evil. Wilt thou then not be afraid of the power? Do that which is good, and thou shalt have praise of the same. For he is the minister of God to thee for good. But if thou do that which is evil, be afraid; for he beareth not the sword in vain; for he is the minister of God, a revenger to execute wrath upon him that doeth evil." Rom. xiii. 1—4.

Two things are to be specially noted in this passage; the Divine origin of government as an ordinance of God; and the power of inflicting death as the minister of God. If these two things be not recognized in this passage, then there is no meaning in it. The sword, as the symbol of power in the magistracy, indicated not an inferior power, merely; but the well-known highest power of life and death, which, as in all such cases, is taken as the symbol. This power Paul sanctions under the Christian dispensation, as springing from and sustained by the

ordinance of God. There is no other possible view that can be taken of the passage. There is in it no suggestion of any repeal of any law—no appeal to the milder genius of the Saviour's dispensation—no appeal to the sermon on the Mount—no retreat from your savage genius of the Old Testament to the mild, forgiving spirit of the New; but an unhesitating, explicit recognition and re-promulgation of the lawfulness and divine authority of the punishment of death by the magistrate, as the revenger of crime, the minister of God to execute wrath upon the guilty. The phrase "bearing the sword" could have been understood by those to whom Paul was writing only as referring to the power of death. The Roman government had not abolished capital punishment, nor was Paul writing to a community of Quakers. He was writing to those who would inevitably have understood him to reiterate as belonging to the magistracy under the Christian dispensation that power to take life, with which society was invested of God under the Noachic and the Jewish dispensation.

Let this argument be carried one step farther in order to test it in Paul's own conduct, and it becomes perfectly decisive. In his own person, at the judgment bar, Paul fully recognizes the justice and solemn authority of the penalty of death. "If I be an offender, or have committed anything worthy of death, I refuse not to die." Acts xxv. 11. Paul supposes that there are crimes worthy of death, and that a human government may rightly inflict the penalty of death for such crimes; he

requires a legal investigation in his own case, and if by such an investigation, he be found to have done anything which deserves that penalty, he does not refuse to suffer it, he is willing to die. The argument thus tested in Paul's own experience, is perfect. It is incontrovertible, that so far from there being any abrogation of ordinance given to mankind through Noah, either in the letter, or by the spirit of the Christian dispensation, we find, in the very opening of that dispensation, a new and distinct promulgation of the same. Nor is this to be wondered at: for the legislation of God with Noah was as purely benevolent as the precepts of our Saviour's sermon on the Mount.

§ 6. SUSPICIOUS NATURE OF ANY ARGUMENT WHICH BEGINS BY DEPRECIATING THE AUTHORITY OF GOD'S WORD.

As to the light which this ordinance sheds upon the divine government, and the radiance which it pours over questions of the highest moment in human affairs, it is, amidst all the depravity, darkness, and bewildering schemes of men, like a sun shot into chaos. It is an orb of light. The attempts to destroy it are just as if you strove to pluck the planets from their places. Nor are the arguments by which its divine obligation is sought to be avoided, restricted, or explained away, any better than the false humanity that characterises the effort. An argument, which begins with a depreciation of the authority, or the excellence of any part of the word of God, is, from that very circumstance, suspicious.

It would be better to yield up the whole benefit of an appeal to divine truth uncontradicted, than to endeavour to ward it off by cavils against its authority, or sneers upon its barbarism. They who speak thus either of the Noachic or the Jewish economy, speak both ignorantly and presumptuously. There has never been a regulation under God's authority which was barbarous or injudicious. It was ever the highest wisdom; but divine wisdom itself is not an abstraction, but in its exercise regards circumstances: and therefore, if any enactment be manifestly local, the question we have to ask is not, Was such an ordinance meant for us? but, how far are our own circumstances so similar to those of the men for whom it was intended, as to make it applicable to us, wise for us? The remarks of a great philosopher on the Jewish economy, one who will not be suspected of religious prejudice, or blindness, are worth consideration. It is Schlegel, who has observed on this subject, that "in practical life, Reason serves as the divine regulator, in so far as it adheres to the higher order of God. But when it refuses to do this, and wishes to deduce all from itself, and its own individuality, then it becomes an egotistical, over-refining, selfish, calculating, degenerate reason, the inventress of all the arbitrary systems of science and morals, dividing and splitting everything into sects and parties." The same great writer has observed of the whole existence of the Jewish people, that "the keystone of its moral life projected its far shadows into futurity;" he might have observed the same

of the ordinance given to Noah, which indeed is the keystone placed by divine wisdom in the magnificent arch of human legislation constructed from on high. This, too, according to that noble expression, projects its far shadows into futurity; it is a prophetic miniature of the key-stone of divine justice and goodness in the government of God in eternity. You may see here an image of the infinite, in the finite, even as you may see the whole cope of heaven reflected in a dew-drop.

§ 7. THE GREAT SACREDNESS AND PROTECTION OF HUMAN LIFE PRODUCED AMONGST THE HEBREWS BY THIS STATUTE.

I have now proved to you the original, comprehensive ordinance unshackled, unrestricted, bold, universal, in an authoritative annunciation as simple, clear, conclusive, as any command in the decalogue, with reasons as manifest, with cogency as great. I then prove to you afterwards additional particular statutes framed manifestly under the authority of this universal statute, in the legislation of a people who received this first book containing it as one of the portions of the Divine law; and this particular enactment as belonging to themselves, as one of the great families of mankind sprung from Noah;—which local statutes, though restricted to the Jews, look back to the great original statute as their fountain, and prove incontrovertibly that thus far that statute had never been repealed. I show these statutes to you couched in such terms, accompanied with such remarkable declarations as to the guilt of murder, that even in local enact-

ments this crime has been manifestly singled out and held up to the world as an exception to all others, in admitting no reprieve or repeal in any case whatever from its assigned penalty. There are no deeper colours, in which the pencil of inspiration itself is ever dipped.

It is astonishing to mark the jealousy of the Divine Being, lest the sympathy of his fallen creatures with sin, and their mistaken pity for the murderer instead of the murdered victim, should turn the course of justice from its prescribed channel. Doubtless the Divine Legislator had observed an unwillingness to follow his supreme wisdom, a readiness to connive at crime and clear the guilty, a readiness on the part of witnesses and of judges to perjure themselves, a sympathy produced partly by family influence, partly by the declamation of demagogues, partly by infidelity, and partly by the plausible pretence of a benevolence superior to God's. For a season, these explicit statutes prevailed to check these influences, and stay the crime of murder, so that, under the administration of the Judges it was so uncommon, that the whole nation from Dan to Beersheba rose up in a complicated case, to punish it. A noble state of public opinion, and produced entirely by the salutary power of these laws. But in after times the law grew again to be neglected, and this remissness in its execution is charged against the nation, as constituting one of its greatest sins, this carelessness of human life, and this permission of bloodshed without avenging it. Your hands are full of blood, says the prophet Isaiah, unavenged blood, and

therefore you may be ever so religious in your prayers, but God will not hear them.

It is described as one of the characteristics of a religious man, which shall dwell on high, that he shutteth his hands from holding bribes, and stoppeth his ears from hearing blood; will not, for one moment, listen to anything, but the execution of the Divine law upon the murderer. All this is remarkable. And all these instances are proofs of the admirable character of the Jewish code: in no nation in the world, while it was observed, had human life any sacredness or protection compared with that experienced among the Hebrews. And in the period of that nation's greatest prosperity, the feeling of such sacredness, and the sense of the Divine law, had sunk down so deep into the soul of people and king, that David, about to depart from life, could not rest, while he remembered that the crime of murder in one of his own captains had gone unpunished. He was compelled by the invisible Spirit of Law and Justice, and Humanity too, to leave it as his dying injunction to Solomon, that the blood of Amasa and Abner, whom Joab slew, should be avenged as the Divine statute directed.

§ 8. THIS STATUTE REPROMULGATED AND ESTABLISHED IN THE NEW TESTAMENT.

Passing now from the argument among the Hebrews of the old dispensation, I carry you down to the period of the great re-enactment and publication of the Divine

law by the Saviour, its repromulgation under the form of love—which quality is the basis of all Divine legislation; for the restraint and punishment of vice in the vicious, grows out of love to the virtuous; and I prove to you that at that time, and all along, before and after, there were cases of capital punishment, and that the authority and power of capital punishment is held undiminished, and of divine origin and sanction. I prove to you that in the time of the apostles this power is recognized as belonging to the magistracy, so that Paul apparently almost goes out of his way to reiterate it, and to hold it up as the highest delegation of power from God to man, emanating directly from the Divine Legislator. And I show you, that so far from any appeal being taken from this law to the law of Christ, it is confirmed by the gospel; and that, so far as our blessed Lord remarked upon the Mosaic institutions, it was not to condemn them, but the rapacity, cruelty, and oppression of the Jews abusing them, and turning their spirit of justice and love into malignity; not to repeal a single one of them, but to regulate their application. I prove to you, that even if our Lord had stricken out, with his own hand, any one of them, this would not have lessened the authority of those that remained; for till the same hand should blot them all away, no human authority should dare to do it. So that, as long as there cannot be found the slightest reference by our Saviour to the law of death for murder; except it may be where he declares that they that take the sword shall perish by the sword, which saying,

so far as it goes, is a reiteration of that law ; even if he had said distinctly as to the law of retaliation by an eye for an eye and a tooth for a tooth, It is all done away ; which he never did say, but simply rebuked the spirit of private revenge making use of that law as its instrument or for its concealment ; this would not have the least bearing on the penal statute for murder, either to question, restrain, limit, or repeal it. Even supposing one statute of the Divine Law repealed by its author, who dare take this example, and follow in the repeal of another, without a direct command from the Deity ? This mode of reasoning is altogether presumptuous and incorrect.

The precepts of our Saviour are sometimes urged as if really the Spirit of God and the Spirit of Christ were contradictory. When the Saviour says, Thou shalt love thine enemies, it is the same benevolence which speaks, The murderer shall surely be put to death. When God says, Resist not evil ; Recompense to no man evil for evil ; Vengeance is mine, I will repay, saith the Lord ; he speaks to individuals and not to the civil government ; there could not be a more perfect obedience to this command, than when the avenging of the blood of a murdered man is put into the hands of the government, and God's own penalty is executed. This is God's own vengeance ; this is God repaying, and not man. Your obligation to love your enemies, is no greater than your obligation to love the community. This train of thought is admirably developed by Rev. Mr. Thompson of

New York. What it may be wrong for you to do as a private individual, it may be wrong for you *not* to do as a *citizen* or an officer of justice. You have no right to inflict a personal injury upon your neighbour, but to love him, though he be your enemy; even if he have murdered your own brother, you are bound to forgive him the injury yourself; but you are also bound to bring him to justice. If you are a magistrate, and your neighbour or your enemy is brought before you charged with an offence against the laws, you are bound to inflict an injury upon him, by the penalty of law, and if the crime be murder, by death. If your dwelling should be set on fire at midnight, and one of your children murdered by your enemy, the Spirit of Christ commands you to forgive him personally, but it commands you also not to shield him from the penalty of the law. The same Spirit of Christ commands you, as you love the welfare of the community, to bring this murderer to justice, to have him arrested and put in prison to receive his doom. You yourself would be an enemy to the community, if you connived at his escape.

§ 9. CONCURRENT PRACTICE AND OPINION OF THE WHOLE ANCIENT WORLD.

I have dwelt upon the existence of this law through the whole course of Jewish legislation, and the continual reference to it in the stream of Divine revelation. I cannot dismiss this point without noticing the strong cor-

roboration our argument receives from the consentaneous legislation of the world from the time of Noah.

We have the unanimous concurrence and practice of the whole ancient world to sustain our interpretation of the Noachic ordinance. We have in the stream of Pagan and classical literature, a continual reflection and memory of its light. "Philosophers, legislators, poets," I speak in the words of one of our distinguished native scholars, (Prof. Taylor Lewis), "all speak of it as derived from primeval tradition, and as coming from a source transcending the memory of history. It is the very precept which Aristotle produces, and with a striking resemblance in some of his terms to the language of the Bible, as an example of what he styles unwritten law, not peculiar to Athens, or Macedon, or Persia, but coextensive with mankind, and found among all nations, civilized and savage. The ancient poets, better expounders of the natural sentiments of mankind than the philosophers, ever speak of it as a law having something peculiarly sacred and holy about it, and differing in this respect from all other statutes, thereby intimating that special Divine origin of which we have so precise an account in the Bible."

§ 10. TENOR OF THE GRECIAN POETS ON THIS POINT, AND ILLUSTRATIONS OF THE JUDGMENT OF THE HUMAN MIND, IN THE CASE OF THE INHABITANTS OF MELITA WITH PAUL.

I may add to this, that the voice of the Grecian poets especially recognizes the proverb that "Murder will

out;" and is an echo of that deep utterance, which God himself interpreted of inanimate nature, "*the voice of thy brother's blood crieth unto me from the ground.*" You may find in the Greek poets a constant reverberation of that voice which in the book of Proverbs comes from heaven: "A man that doth violence to the blood of any person, shall flee to the pit; let no man stay him." It seems to be a law of the human mind, in the natural, social state, to sleep not, to rest not, until the spirit of the murdered victim is answered in this appeal. There is an instinct for the punishment of murder by the death of the murderer; Cain himself manifested its power and its terror when he said, "Every man that seeth me will slay me." The inhabitants of Melita manifested its power when they said, in the very spirit of a chorus in the Greek Tragedies, and of the word of God itself, as they saw the viper fastening upon Paul's hand, "No doubt this man is a murderer, whom, though he hath escaped the sea, yet vengeance suffereth not to live." The word here means not so much vengeance, as the invisible, Divine Avenger—the ever-watchful Deity of Justice. This is one of the most remarkable expressions to be found on record, of the sense in the minds of the heathen, of the existence and providence of such a power. I may add, also, that this is an equally signal development of the innate idea of right, as applied to punishment. These men did not think of the good of society or the necessity of punishment for its protection; but they said, This man is a murderer; he *ought* to

have been put to death; justice required it, and now justice hath overtaken him. In this they simply uttered the innate feeling of right—the inward sentence of the soul, to which every soul responds. It is right that the murderer should die. There was nothing vindictive—nothing revengeful in this feeling. It is the constitution of our nature to make us feel that crime demands punishment; it is not merely a suggestion of expediency—it is an instinct of our being.

To the argument from the scriptures I shall now add one more text, because standing at the close of the Bible, it completes the golden chain of argument, running like a furrow of light through the whole Bible on this subject, from Genesis to the Apocalypse. It is this, from the Revelation of St. John, xiii. 10: "He that killeth with the sword must be killed with the sword." It is powerful for two reasons. First our marginal annotators, without any point to gain or any special pleading, have referred us for a scriptural comment on the meaning of this passage, to the ordinance in Genesis. Second, the impersonal Greek verb δει, which is here used, carries with it the sense of necessity, propriety, fitness, moral obligation. He that killeth with the sword, must, ought, shall be killed by the sword. This also is very like that proverb which I have quoted: "He that doth violence to the blood of any person shall flee to the pit: let no man stay him."

§ 11. CONSIDERATION OF THE SLANDER THROWN UPON THIS STATUTE AS IF IT WERE VINDICTIVE—BENEVOLENCE OF THIS STATUTE.

This brings us to the consideration of the slander thrown upon this statute as if it were malevolent, revengeful, vindictive. The sophistry of our opponents is often mainly deployed upon this point. You are pleased to call it vindictive, and in this way seek to array against the punishment of malice, that feeling of indignation, which rises in a just mind against malice itself. Now it is perfectly clear, that in this legislation there is nothing malicious, nothing vindictive. It proceeds from love, from benevolence, from the absolute, humane necessity of preventing crime, and guarding the world against it. Of all processes of law, that in which the murderer is condemned to death is the most solemn, deliberate, compassionate. The law never shows its majestic combination of immutable sternness, with the constant play of human sympathy more clearly. The benefit of every doubt is allowed to the prisoner; the court, judge, and jury all wish that he may be proved innocent; the verdict of guilty is pronounced with hesitation and sorrow; the judge declares the sentence with reluctant humanity; the whole community, pressed on by the invisible, sublime power of that element, whose agency supports the universe, do nevertheless shrink back in horror and pity from the awful conclusion. All this proves at once the absence of every vindictive element; but demonstrates at the same time, the protective and salutary terrors of

the punishment. The impression on the community is a most deep, salutary, beneficial one. The image of divine law and divine retribution is reflected as in a mirror to the inward prophetical vision of the soul. The thought of vindictiveness is the last that would enter the mind; the thought of the dreadfulness of the crime of murder, and the awfulness, immutability, and certainty of justice, in its punishment, is roused. If any just penal inflictions *could* suggest the idea of vindictiveness, there are other modes of punishment, which would do it much more readily. Punishment by death is no more vindictive in its nature than imprisonment, than fine, than banishment. But the word itself is a sophism. It does not belong to justice, which is *vindicating*, but not *vindictive*. When you apply it, you are guilty of a deliberate misstatement; you appeal to prejudice by an argument which you must know to be false.

It is not only not vindictive, but it is humane in the highest degree. That is true humanity, which looks to the highest good of the greatest number. In this view, all penalties of the divine law, and all just penalties of human law, are the offspring of benevolence. Your frowning prisons, in which living men are immured in a death to society, to love, to domestic tenderness, to nature, to the sweet changes of the seasons, to all that can render life desirable, on your reasoning are inhuman and vindictive in the last degree. The element of malice, if you charge it against the penalty of death, is more marked and manifest by far, in this penalty of a

living death in perpetual imprisonment. When one of the trusted ministers of Louis XI. had betrayed his master, that tyrant kept him fourteen years in an iron cage in one of his grim castles. There was more vindictive malice in that act than in twenty executions. In all forms the just penalties of law are not vindictive, but benevolent.

§ 12. MISTAKE CONCERNING THE NATURE OF BENEVOLENCE.

There is no mistake more general, than that concerning the nature of benevolence, the monstrous mistake of supposing that benevolence cannot punish. Nor is there any statute of the Divine law better adapted to correct that mistake, than this statute of capital punishment. The highest proof of malevolence would be not to punish, but to let sin prevail. In this view, the evil which in this world follows the commission of crime, the evil which is attendant on sin in all its forms, is a necessary part of the demonstration of the Divine goodness. This being a world of sin, if it were not also a world of misery, you could not prove that God is a benevolent God. A being not benevolent would let mankind go on in their sins without any check. The miseries of mankind do, in this view, prove the goodness of God ; and instead of needing an explanation or apology, as if they constituted a difficulty in God's government, they are absolutely necessary to demonstrate that we are under his government. They prove that a being of infinite goodness is at the head of affairs. Nor is there anything that proves

this more truly, than the ordinance that whosoever sheddeth man's blood, shall himself die.

The retribution in this statute is an image of the divine retributive justice in eternity. Into this one statute the principles of the Divine government are concentrated; it is a prophetic image; and those who disregard the statute, and deny its principles, must, according to the warning even of a heathen philosopher, look that they be prepared for a future development, which may very much astonish them. It was Plato, and not a Calvinistic theologian, who said that the laws in the eternal world, the sisters of the laws in this world, will give their enemies a fearful reception in eternity.

§ 13. CONCLUSION OF THE SCRIPTURE ARGUMENT.—NATURE OF THE ATTEMPT TO ABOLISH THIS STATUTE.

Here I must for the present rest the argument, but I leave it on an immovable foundation. The argument from expediency against the abolition of Capital punishment is equally strong, the divine will and wisdom being the highest possible expediency; it will lead me over a path of the deepest interest, both in the statement of the argument itself, and in answering the objections brought against the statute as it stands, where we hope it ever will stand, in our codes of law, and is happily and humanely practised, where we hope it ever will be practised, in our Courts of Justice.

The attempt to abolish it is the array of the opinion

of a few persons, at a particular juncture of time, against the dictate of divine wisdom, and the wisdom and experience of all nations, in all states of society, in all ages of the world. It is a hardy enterprise, this opposition, as it has been admirably stated, of the *vox populi* of the present moment against the *vox Dei* of the Scriptures, and the *vox humanitatis* of the whole human race. But the opponents of this law have not even the *vox populi* to sustain them; it is a mistake if they assert this to be the popular opinion; the appearance of it is only the assertion of it by themselves with the unsubstantial echo, but not the voice. I rejoice in feeling sure that this is the case, that the popular feeling, and the benevolent feeling, are in favour of this law. I believe in general, and we have the history of the French revolution to support the opinion, that the very same men who sometimes clamour the loudest for the abolition of Capital punishment, on account of the vaunted humanity and enlightened public opinion of the day, would be the persons, if a tempest of public opinion happened to sweep in favour of Lynch-law, who would drag a man even from the safety of the prison, and hang him on the nearest lamp-post.

Public opinion may be mistaken at a particular juncture—often is. And we wish it to be considered whether any one generation of human society is capable of deciding, by its own experience even, the fitness or the unfitness of a law, which God has seen best to promulgate for the human race. Before all experience, we

should judge that a legislation intended for six thousand years would very probably pass over intervals of time and phases of society, in which the particular application of its wisdom might not seem so manifest—might possibly be deemed questionable. But should we say that the doubt or the question engendered by particular circumstances, or by one people, could justify the race in altering or repealing such legislation? Should a law intended for a thousand years, be repealed because the experience of one of those years seems to run not accordant with the line traced by the reason of that law? Proportioned to the importance and unchangeable wisdom of this law, is the universality of its publication. There is no nation so barbarous, no period of the world so rude, degraded, ignorant, that has not known it, that has not possessed it, however simple and informal may have been the elements of legislation. There is no nation that has risen to refinement and vigour of mind enough, to embalm in an undying literature, the voice, the opinion, the experience, of morality and prudence, that has not spontaneously echoed and sanctioned this statute, as if it were as much the dictate of man's being as of God's wisdom. It stands at the opening of an early and unpolluted world, before one drop of blood, save that of a hallowed sacrifice, had bedewed the earth, yet fresh and moist from the cleansing deluge. Before there was room for a single emotion but of gratitude and love, it was revealed as one grand element, not of revenge, but of blessing, in the Divine covenant with the human race.

The hand that drew the rainbow over the sky, in sign "that storms prepare to part," wrote this statute in lines no more to be effaced till the destruction of all things, than the colours of the rainbow can be blotted from the sky, while lasts the constitution of this physical universe. And as in every conflict of the elements that might fill men's souls with terror of another deluge, this bow of mercy, this vision of delight, should span the clouds with the glittering arch, so in every storm of human passion, that rises to the violence of death, this statute, as a bow of promise, is God's assurance to the world, against the anarchy of murder. There probably never was an instance of murder in the Christian world, in which men did not think of it; nor ever an instance in the heathen world, in which the voice of conscience did not echo its assurance. As it stands in the Scriptures, it is one of the planets in the firmament of revealed truth; to strike it out from its place, and from its authority for the guidance of human legislation, would be like striking the constellation of the Pleiades, or the bright North Star, from heaven. A great writer has said, with most profound wisdom, that it is only by celestial observations that terrestrial charts can be accurately constructed; and so, it is only by the divine light that comes down from these divine statutes, that human legislation can be perfected; it is only by comparison with these statutes, that the mistakes of human prejudice or ignorance can be detected and adjusted. Sure we are, that on the ocean of human passion, neither states nor

individuals can be safe, but by charts, mapped and marked beneath the light of these enactments. It is light, like that of the planets, has travelled unaltered and unabated across the storms and changes of thousands of years; and still it shines, and still will it shine to the end of the world; for as sure as we are that a God of mercy gave this comprehensive element of law to Noah, so sure we are that he will never suffer it to be blotted from human statute books, by the presumptuous tampering of a single generation.

ARGUMENT OF THE SECOND EVENING.

§ 1. REASON OF THE STATUTE PERPETUAL.

An objection is sometimes brought against the binding and perpetual obligation of the Noachic statute, that if you take it as we contend, you must also take the prohibition not to eat blood. This is worth noticing. I might contend that this is simply a prohibition against a species of cannibalism, for it is not the blood that is forbidden solely, but the flesh with the blood. But I apply to this prohibition the same reasoning as to the injunction. It is of force while the reason for it remains. It was given in reference to the sacrifices which were to constitute the standing type and prediction of the great sacrifice of the Messiah for the sins of the world. To make that rite more sacred, to maintain the idea of the solemnity and sacredness of religious sacrifices, in which so deep and holy a life and meaning was in the blood of the victim, this prohibition was laid down against eating the blood with the flesh. As long as the rite of sacrifices lasted, the force of this prohibition stood, because the reason for it remained; but when sacrifices and

types were abolished, the particular binding force of this prohibition fell with it, the reason for it no longer existing. But this does not affect in the least degree that great injunction of the punishment of death for murder. If the reason for that command could be shown to be no longer existing, then the injunction itself would fall, but not otherwise. *Lex stat, dum ratio manet.* The reason remains. We are made in God's image; every generation to the end of the world will be; therefore, on every generation this law is binding.

§ 2. ENORMITY OF THE GUILT OF MURDER, AND NECESSITY OF A PENALTY THAT SHALL MAKE IT PARAMOUNT IN ITS RETRIBUTION, AS IT STANDS IN ITS GUILT.

There is no computing the enormity of the guilt of murder. It stands alone, and unapproached by any other crime in its atrocity. Its intrinsic enormity, and its dreadful consequences are such that we need not wonder at the language in which it is described and denounced by Jehovah, nor at the penalty of death affixed to it. It is right, it is benevolent, it is necessary, that such a crime should invariably, without any exception in any case whatever, be punished with the extremest penalty of which heaven has annexed the authority to human law. There ought to be such a penalty, high, awful, distinctive, to mark this crime in its *retribution*, as it stands in its *guilt*, paramount to every other. The conscience of society should be educated in the view of such a penalty; and if it were not, or when it is not, poor

and cheap indeed is the estimate placed upon the sacredness of human life.

The object of all punishment is benevolent, it is the well-being of the community. It is to prevent crime by supporting law. The penalty of the law must be an evil, which the man intending crime will balance against the good he proposes to himself by the crime. He must fear the evil more than he desires the good. Do you say that men commit crimes in passion, and that there is seldom this balancing of motives and considerations? I answer, this may possibly be true in regard to all minor penalties, and this is one strong argument for having in the case of murder so terrific, strong, overbearing a penalty, that it shall break down all other considerations, that it may stem the torrent of passion, that the criminal may hear a voice amidst the roar of the tempest of passion commanding him to refrain.

§ 3. STATEMENT OF THE QUESTION OF EXPEDIENCY.

Now, it being granted that the murderer deserves to die, and that society have the right in some cases to inflict the punishment of death, the question of expediency before us is simply whether punishment by death operates more effectually to prevent the crime of murder than any other penalty. Now, then, who are they from whom we have to fear murder? Any man may become a murderer with sufficient temptation; but in general it is men already hardened by crime, from whom the crime of murder is to be feared; it is men urged by want, out-

casts from society, beings with whom life is already so deprived of comfort, of respectability, of happiness, that a jail with its food and clothing would be almost a relief instead of a punishment, while death would be the most terrific of penalties. It is manifest that there is almost no good motive to restrain such persons from crime. There is nothing but fear that will do it. But the fear of the prison is almost changed into a relief at the thought of its shelter. With the penalty of death it is very different. Here you appeal to a terror as far greater than all others, as the crime itself of murder is greater than all others. "In all secondary punishments," remarks a legal writer, "it is assumed that the convict is well fed, well clothed, well lodged, and well attended to. He may have no luxuries and few comforts, but he has entire security against starvation or want, perfect protection against the weather, and certainty of medical assistance in case of sickness. To the unthinking multitude the secrets of the prison-house can never be fully revealed, and there will always be some room for doubt and hope as to the lot of the convict. The executioner alone inflicts a punishment of which the sufferings can never be called in question."

I may add to this, that you may put what guards you will about your plan of imprisonment, to make it perpetual, there will always be hope of escape. Criminals sentenced to imprisonment for life, have ordinarily, on an average—if you take this State for an example—spent in prison about six years! But even if you made

the date absolutely immutable, there will always be murderers, who, with the ingenuity of Baron Trenck, could almost eat their way through stone walls, as easily as they could eat the heart out of their own humanity. Or if not, a villain who will commit a murder that brings him into prison, would not hesitate a moment to commit one that shall take him out.

§ 4. POWER OF THE FEAR OF DEATH AS A PUNISHMENT—ILLUSTRATED IN THE CASE OF COLT.

Indeed, there is nothing that can possibly check the spirit of murder, but the fear of death. That was all that Cain feared; he did not say, people will put me in prison, but, they will put me to death; and how many other murders he may have committed when released from that fear, the sacred writer does not tell us. Nor is it anything but this, that the whole progeny of murderers, from Cain downwards, ever fear, nor anything but this fear that ever will restrain them. They fear the same tremendous evil which they inflict on others, but nothing else.

And you may range the whole Newgate Calendar, with the experience of all gentlemen elopers with the estates of heiresses, who, like Gilbert Wakefield, have got into it; and you may tell as much as you please of the insensibility of obdurate villains even in the face of death; but such testimony weighs no more against the power of the fear of death in all mankind, than the testimony of a perjurer and a murderer would weigh

against an honest man's testimony in a court of justice. But if it did weigh, what does it prove? Why, that, there are such monstrous villains, so steeled and inveterate in wickedness, that death itself has no terror for them; but certainly if they do not fear death, they fear imprisonment still less; and if they would murder even with the fear of death before them, much more will they murder when that fear is taken away. Besides, if because a villain says that he neither fears your law nor its deadly penalty, you bring that as a reason for abolishing the penalty, suppose another knot of villains tell you that they do not even fear God, nor his terrific penalty; the same reason would be just as good for striking that penalty from the government of the universe. Or if another gang tell you that they care not a fig for your perpetual imprisonment, then by parity of reasoning, you ought to abolish perpetual imprisonment. The reasoning from these drivellings of depravity in malefactors is to the last degree wretched and absurd. Hard pushed indeed must he be in argument, who can consent to dive down into the polluted heart of a Newgate criminal, in order to fish up, from the confession of his monstrous, unnatural obduracy, an argument in that very obduracy against the fit punishment of his own crimes.

I think there is a testimony from criminals sometimes elicited as to the real fear of death, which it may be well to set over against all this. It is that rather than die by the penalty of the law, they sometimes kill themselves. But who ever heard of a man killing himself

to avoid imprisonment? What malefactor, whom the officers of justice were carrying to prison, if the populace should try to kill him, would not cry lustily for help? You cannot believe that the wretched Colt would have killed himself, if his punishment had been merely imprisonment instead of death. Besides, what language was it which was spoken in that hurrying and anxiety to have his sentence commuted, that intense effort on the part of counsel, friends and criminal for this purpose. Well then, a punishment which the criminal fears more than death, must be of all others most powerful to restrain from crime.

But you object that it *leads* to suicide. We answer, that it places suicide itself as a terrific consequence of crime, a terrific form of vengeance uprising behind the shade of the murdered man to the murderer's own view. It places the crime of murder on one side—a public execution or suicide on the other, with no possible alternative. Now the whole system of criminal jurisprudence goes upon the supposition of a future state of retribution, the supposition that men believe it, and that no man will flee voluntarily from this to that. It does not contemplate, and it ought not, a state of society, in which men's fear of a future judgment is taken away. It contemplates that judgment; and its highest, last, most awful resort, when men commit the highest, last, most awful crime, a crime from which all lesser penalties are unavailing to restrain them, is to hand the criminal over to that dread tribunal, which alone can deal with him. It

seems to me that in this point we have a most solemn connecting link between God's jurisprudence and our own. God's high court has a passage from our inferior one; and in the case of this crime, it is as if God had said, Here you can do nothing but to hand the criminal over to his last judge; he has passed that limit, in which it was possible to permit men to sin under the jurisprudence of probation.

§ 5. OBJECTION CONSIDERED, OF THE UNCERTAINTY OF THE PENALTY.—SALUTARY POWER OF THE PENALTY OF DEATH FOR MURDER, AS CERTAIN.

I am not now arguing for the restraining power of an uncertain penalty, but of a penalty, which, restricted to the crime of murder, shall be made absolutely certain. One of your objections against punishment by death is the uncertainty of its execution, and that this uncertainty renders the penalty itself ineffectual. Very true; and this very uncertainty, and the consequent weakening of the power of law and of its protective energy to the community, is in part owing to men's injudicious efforts against this penalty. They act some of them from a warm heart, no doubt, but not from a wise and large philanthropy. This uncertainty, with all this whimsical scrupulosity of jurors, is not a little produced by that mawkish sensibility, which weeps over the fate of the murderer, but forgets the murdered victim, and neglects the protection of the innocent.

Now to test this fear of death, and its power for pre-

venting crime, put aside these uncertainties, from whatever cause produced. Make the penalty certain. Suppose the intended criminal to know that the public eye is on him, that Justice will not sleep till he be detected, that such is the virtuous state of feeling in the community, such the regard to God's law, such the sense entertained of the sacredness of human life, and of the enormity of the crime of murder, that no effort or expense will be spared to bring him to justice, and that if brought to justice, he will inevitably be executed; that no jury will entertain any false scruples, that no false sensibility will be exercised towards the murderer, that no deputations from the bar will be hurrying to and fro for his pardon, but that there will be such a humane regard for the murdered victim and the interests of society, as will surely avenge his death—I say, suppose all this, which is what we contend for, and then the murderer sees at once that to take the life of another man is just to take his own. He might just as well commit suicide as murder. He plunges the dagger into his own bosom, when he strikes it into that of his neighbour. And how often do you suppose he would thus strike it if this were the case? Why, it would restrain the angriest, most passionate malignity. The truth is, it would be the very perfection of jurisprudence, if you could make murder a suicidal act: the crime of murder would well-nigh cease from existence. Put your statute on the right basis, and you do make it such. Throw away your absurd reasonings, your cavillings against

the laws of God and man, and make the execution of the penalty of death for murder absolutely certain, and its restraining power against crime is immeasurable. This is the reformation we need; not the abrogation of this penalty, but the putting it where God puts it for all mankind, as the penalty alone for murder.

§ 6. THE PROTECTIVE POWER OF THIS PENALTY FOR SOCIETY.—NECESSITY OF HAVING THE GREATNESS OF THE GUILT OF MURDER MARKED TO THE CONSCIENCE OF THE MURDERER, BY THE PENALTY.

I have proved the restraining influence of this penalty in preventing crime. Next as to its protective influence for society. It is manifest that this is just proportioned to its restraining influence over the criminal. Whatever prevents crime, protects society. Now, your abrogating course is so far from giving society protection, that it is almost an invitation to murder. Let us trace the course of things. *Nemo repente fuit turpissimus.* No man becomes a murderer at once. A man begins his career with small steps. From his father's house forth into the wilderness of crime he goes timidly. But the tenderness of his conscience is gradually destroyed, and one crime and another is committed it may be with impunity. The penalty of discovery he has often faced, and become accustomed to look at it calmly and to balance consequences. Disgrace, fine, imprisonment, all these are evils that may be borne. If the worst ensues, still life remains, and there is hope in in-

genuity, and even in guilt. But at length his steps in crime have brought him to the verge of murder. His victim is before him. Perhaps it is a rich, gray-haired old man, sleeping calmly in his bed at midnight. The dagger is lifted. Now, between this crime about to be perpetrated, and every lower crime, there is a vastness of separation which the mind cannot fathom. It is invested with horrors; it puts whole coils of serpents in the conscience; it has a redness and a blaze of guilt, which, if any symbol could mark them, ought to be set up in open day to the universe, ought to be made to flash like a sword of fire upon the soul. But your hardened man of guilt does not see this. And what have you done to remind him of it? What separating wall have you raised to keep his soul from the damnation of this guilt, of which God himself hath said that no murderer hath eternal life abiding in him? He has come to the verge of murder. What is there now to stay him? What writing on the wall, what external sign, what additional terror to rouse up his conscience, and show him the tremendous depths of the gulf he is about passing? What is there to show him that the step he is taking is not one of his previous degrees of crime, but a convulsive, awful sweep of his being into a depth of guilt, compared with which the whole previous iniquity of his life is as nothing? You have put no mark here. You have torn down the barrier, which God himself had erected in mercy to the criminal as well as to the innocent. You have taken away the landmark, the warning

which God himself has put up for all mankind, and which assuredly marks a mightiness of guilt and of terror in the next step of evil, which nothing but the wide difference between the penalty of death and every lower penalty could mark. You must have such a mark; the soul of humanity calls upon you for it; the blood of every murdered victim crieth from the ground; you are guilty of a monstrous iniquity if you blot it out; for there is no comparison between the madness, the ruthlessness, the monstrousness of murder and every other crime. In mercy to your fellow-creatures, you are called on to distinguish it from every other, by a penalty which, like that statute of God—that statute of mercy at the world's opening, stamped the conviction of its iniquity into the soul of mankind.

I have taken the case of a man whose successive steps in crime have brought him to the verge of murder, as a new and separate guilt. But suppose him to be brought to the verge of murder while in the commission of some other crime, and in order to conceal it, then the argument becomes vastly more powerful. While the Tempter is whispering, If I take this man's life, I may conceal my crime, conscience and the law should answer, You die for it. The ministers of justice will be infinitely more keen in your pursuit, the eyes of the whole community will be flashing for you, mere suspicion will detect you, your own conscience will lead you to discovery; and death, temporal and eternal, is before you. The motive for the concealment of crime is so powerful an

incentive to murder in such a case, that we are bound to guard against it. But to abolish this penalty is directly to throw the temptation of murder in the way of a criminal, who, perhaps, otherwise would not have dared to think of it, even for the concealment of crime. To abolish this penalty is to make murderers out of common villains. They will murder to conceal their other crimes, as soon as you reduce the penalty for murder to the same level with that for others. The penalty for murder being no greater, they are no worse off, even if discovered. Without the murder, perhaps discovery is inevitable, and imprisonment must ensue. With the murder, even if discovered, the penalty can be no more than imprisonment. But by the murder the whole crime may be concealed, and the murderer may come off completely clear. It is manifest in such a case that nothing but this penalty can protect society.

§ 7. INJUSTICE AND INHUMANITY OF THE ABOLITION OF THE PENALTY OF DEATH FOR MURDER.

I have shown that this penalty is necessary for the restraint of crime and the protection of society. I shall now show that the proposed abolition of it is unjust and inhuman in the last degree. It is a policy, the cruelty and barbarism of which is susceptible of a perfect demonstration. It introduces the element of inhumanity into the very education of society. Your jurisprudence is a most important part of your education for the community. It trains the common conscience. But in the

abolition of this penalty, you occasion a general degradation of the moral sense; you teach that there is no difference between the guilt of murder, and that of mere forgery and stealing. You lessen men's estimate of the sacredness of human life, and you are unconsciously training men's passions for the cruelty of murder. You degrade the whole subject and science of morals; for this is at the foundation of it, involving all its principles. You give place and full swing to duelling, bloody riots, and private revenge. What you refuse as a government to do for the family and friends of the murdered man, and for the interests of the community, you may be sure the malignity of private revenge will not fail to accomplish. You take away the strong security of your police, and you expose the lives of your jail-keepers to imminent hazard. A most faithful and vigilant police officer, since the abolition of capital punishment has been spoken of as a probable thing, has had his own life threatened, and the lives of others in his presence, and when he has told the villain that his own life must pay the forfeit of such a crime, the answer has been, "There is no fear of that in these days." The police officer added, that if the law should deprive him of this protection, he should be afraid to go to haunts of crime, which in the support of the law, he now visits. Who indeed, what public servant, either in this city or in London, would dare plunge into the recesses of crime to ferret out the villain, if the strong fear of this penalty did not go before him?

§ 8. OBJECTION CONSIDERED OF THE DANGER OF MISTAKING THE INNOCENT FOR THE GUILTY.

Your zeal for the abolition of this penalty may be the zeal of love, but it is the logic and philanthropy of cruelty and murder. It is a most inhuman neglect of the interests of the innocent, to save the forfeited lives of abandoned villains, the example of whose security will sharpen the appetite of all other murderers, and who will certainly themselves murder again, if they can get out of prison. It is a philanthropy that pays no regard whatever to the unquestioned fact that thousands of murders have been prevented by this penalty, thousands of innocent men saved, and innocent families preserved from the stab of the assassin, but with a morbid, diseased, pseudo-benevolence it rakes the records of crime for those mistakes to which human imperfection necessarily exposes human legislation, and if in one hundred cases false executions can be made out in two thousand years, it regards the lives of a thousand innocent persons saved from the murderer as nothing in the comparison. Ten innocent persons killed by mistake in two hundred years, are more than a balance against the lives of a hundred innocent persons who would have been killed by the murderer, had it not been for this penalty. The truth is, your statistics and calculations of profit and loss on human life, are, as has been admirably said, the arithmetic of Judas Iscariot, the calculations of the price of innocent blood.

Now that I have met this objection of the danger of mistaking the innocent for the guilty, it is best to demolish it more fully. There is the same danger against all punishments. False *imprisonments* occur, and are not discovered till many years have elapsed. Is that an argument against imprisonment for crime? Suppose you could be assured that there had been one hundred cases of false imprisonment for life in the course of English jurisprudence, would you deem that a justifiable ground for the abolition of imprisonment for life? But let us grapple a little closer with these cases. They are given, most of them, in a former edition of Phillip's Treatise on Evidence, and they constitute, it has been said, the stock in trade of the prisoner's counsel in all murder trials. "Whoever will examine these cases, will find that in almost every instance, except those in which the *corpus delicti* was not found, and it appeared afterwards that no murder had been committed, the real culprit has taken away the life of the innocent prisoner by perjury, or, which amounts to the same thing, by arraying and directing a set of circumstances so as to implicate him. The amount of it is, that the murderer, in addition to the murder already committed, has made use of an institution of justice, instead of the assassin's knife, to perpetrate another. There is, in such cases, an additional murder committed, not by the law, nor by its ministers, nor yet by the State, which gave them their authority, but by the wretch, who has brought upon himself the guilt of a

double murder to prevent the detection of one. There may therefore occur now and then, with extreme rarity, an instance in which a murderer will seize upon this law to commit another murder, for the purpose of screening the one already committed." But if on this account, you abolish the penalty of death to avoid these cases of murder in the second instance, you at once increase the number of murders in the first instance. You relinquish the reality of justice to snatch at its shadow. This objection is not good against the penalty, though it is of use in enjoining the utmost carefulness in criminal trials; but still we must keep the law, because we are certain that the abrogation of the penalty would lead to tenfold more murders, than can possibly be committed through the abuse of it. The example of our Saviour is in point in a case analogous. The Jews in his day abused the law and its penalties for their purposes of private revenge. Did he on this account abrogate the law, or take away the penalties? Not at all, but confirmed them both, while he forbade the abuse of them.

§ 9. DEMONSTRATION CONTINUED OF THE INHUMANITY AND INJUSTICE OF THE ABOLITION OF CAPITAL PUNISHMENT.

Having disposed of this objection, I proceed now to prove more fully the injustice and inhumanity of the effort for the abolition of this penalty. You are unjust, if you do not give to society the same means of self-defence against assassins, which they relinquish for the

protection of the government. Men do not wear arms—but why? Because of the solemn assurance that the government will protect life in the same way, if need be, in which weapons of death protect it;—because of the knowledge that the criminal is aware, if he takes life, that his own will be taken. Now to take away this penalty is in fact to take away from the community the means of self-defence. It is to make cowards of the innocent, but brave men of the guilty; for what man, for example, will dare defend his property, if a villain sets upon it, when the very defence may make the villain murder him, you having taken away from the villain himself all fear of death, no matter what crime he commits. If a man breaks into your house at midnight, with the knowledge that the punishment for murder is death, though that for housebreaking is not, you might be ready to confront him, and defend your property; but if you take away this penalty, you paralyse your own arm, and you nerve that of the house-breaker with tenfold desperation, since he may finish his villainy with success if he murders you; and if he be caught, the punishment for murder, at all events, is no greater than that for housebreaking, and if he does not murder you when you have confronted him, he is in danger of discovery at any rate. You are therefore rendered defenceless in an attack upon your property by the security of your adversary's life; or if at all events you do attempt to defend your property, and discover or drive away the villain, you are almost sure to be murdered, if he can

murder you, for his life is safe, while the taking of yours is perhaps necessary to his success. He bears a charmed life, the consciousness of which unnerves you, but nerves him. Just so, if your person be assaulted, and you resist, your very defence is likely to procure your murder, for you are the helpless one, your assailant has all the advantage; the assassin cannot be killed, he is secure by law; but if he kills you, he may escape completely. To abolish this penalty would therefore be gross injustice and inhumanity both to the innocent who are murdered, and to the innocent living. It is securing the murderer against death, but exposing the community to death by the hand of any villain, who, knowing that his own life is protected by statute, chooses to kill. It is, in fact, *a premium on murder, as the safest of crimes.* If you commit any lower crime, you may be punished for it too much. If you commit this crime, you are sure of a punishment less than the evil you inflict upon others. The glaring injustice and inhumanity of such an arrangement is perfectly obvious.

Now to fasten this argument with incontrovertible power, I shall refer you to a case, which though it is on record, I have received from a near relative of the monster concerned. The creature in his passion held an axe over his wife's head, and told her that nothing but the law saved her life. "I would kill you in a moment," said he, "if I did not know that I would have to swing for it." I appeal to the good sense and humanity of our audience, is not that a benevolent statute, which

extends over that lonely and wretched mother the only protection for herself and children? And is not that a most inhuman effort which seeks to take away from before that brutal husband the fear of death, which, as he himself says, is all that now restrains him? Which is the spirit of Christ? the spirit that vindicates the law, and protects the community, or the spirit that takes away at once the dreaded penalty of the law, and the protection of the innocent? Which is the benevolent effort? that which throws its shield over the murderer's life, but gives up the unprotected victim to his malice, or that which binds and holds back the arm of the murderer, by making his own death the certain consequence of his intended crime?

§ 10. THE STATISTICAL ARGUMENT—ITS WEAKNESS AND ITS SOPHISTRY.

We come next to the statistical argument of my opponent. And I have to say at the outset that it is of such a nature that you cannot trust it. The argument from statistics, so far as it is gathered from all offences below the crime of murder, does not bear upon the question of capital punishment for murder at all; but if it did, your induction is so narrow, so many causes are unnoticed, and the phases and influences of society are so changeable, that the results of your figures in a question of morals are likely to be utterly fallacious. It is often said that figures cannot lie, but you may marshal them in such a way, as to make them tell a falsehood in one direction, while they speak the truth in another.

Nor can there be anything more palpably false, and yet very plausible, than the mode sometimes adopted in arraying these statistics. Here is a country, for example, in which the penal code annexes death to several crimes, but in which, for a number of years, from various causes, crime has diminished; of course capital punishments have diminished also. The murders have not diminished because capital punishments have diminished, but the capital punishments have diminished because the murders have diminished. Now your industrious statistic gatherers take these facts. They put the diminution of the capital punishments first, and the diminution of the murders as the consequence. In one column you see a decreasing ratio of capital punishments, in the opposite a decreasing ratio of murders. Ergo, the diminution of capital punishments has diminished the murders! This is not exactly, according to the vulgar but pithy saying, the cart before the horse, but it is rather the horse behind the cart. And I think I need not labour to expose either the absurdity of such statistics, or of the conclusions drawn from them.

When I hear men reason on the amelioration of a penal code, and then ascribe to this one cause the whole diminution of crime in society, it seems to me much as if Dr. Brandreth should state how many million boxes of his pills society have taken in the last half dozen years, and then having shown a diminution of diseases in that period, attribute the whole improvement in the health of mankind to his pills. The truth is, that this

same diminution of crimes would have been produced by other existing causes, which undoubtedly are at the foundation of it. The decrease of intemperance, the influence of Sabbath schools, the prevalence of a better education, an increased attendance on the preaching of the gospel, are sufficient to account for improvements in society, which you trace directly to a change in the penal code; but if not, what a manifest absurdity it is to set up the experience of half a dozen years, in a State, which on the map of Europe you may cover with a sixpence, the experience for example of Belgium, only since 1830, and even that experience most doubtful in itself, and most imperfectly known, against the practice, reason, belief, and experience of all mankind, in all states of society, in all ages of the world. If I chose to reason in this way, I could show you statistics in the recent experience of England, to offset the experience of Belgium. For example, it is well known, from valuable tables constructed by Rev. Mr. Redgrave, of the Home Office, and annually presented to Parliament, that since the removal of the penalty of death from two hundred offences in 1837, there has been a very considerable increase of those offences, an increase of no less than thirty-eight per cent. What shall we make of this? Shall we say that it proves that the penal code of England ought not to have been ameliorated? This would be the logic of my opponent, but I say no. The facts are not broad enough to justify the conclusion. There must be a much longer experiment, a much

wider and more careful induction, and after all, even if those offences should be found still to increase, that would not justify the applying to them again the penalty of death.

§ 11. CAUSE OF THE PREJUDICE AGAINST THIS PENALTY.—REAL NATURE OF THE STATISTICAL ARGUMENT.

Now with regard to the crime of murder, the case is wholly different. It ought to stand apart in its penalty from all other crimes. And it is the annexing of the penalty of death to so many other crimes that has made the whole difficulty. Death has been taken from the hand of the Divine Legislator, from the place he assigned to it as a penalty, and most wantonly, most barbarously, most indiscriminately applied to minor offences, in such wise, that the mind is filled with horror at the sanguinary and oppressive nature of such codes. Hence a prejudice against the infliction of this penalty in any case. Hence has it proceeded that it has become a mere threat, in many cases not executed. Hence the unwillingness of juries to convict. Hence too the penalty of death has lost its preventive power against crime, even the crime of murder; nay, being applied to minor offences, it follows naturally that murder itself would be committed to conceal them. Now here is the secret of the apparent weight of the statistical argument, which in reality bears not in the least degree against the punishment of death for murder, but only in favour of restricting that penalty to the crime of murder. Nothing can be more

idle than to array before us statistics in regard to minor crimes, taken from countries where in the penal code there has been a great abuse of this penalty of death. It has nothing to do with our argument. The penalty of death, you say, being abolished, crime has decreased. What does this mean? Is it a new principle in human nature developed, whereby men will sin the more, the more they have to suffer for it? Not at all. The solution of the riddle is just this. When the penalty of death was common for minor offences, men committed murder in the hope to conceal their common crimes. Now the penalty of death being taken away from such minor offences, such murders for the concealment of those offences cease, unless you take away the penalty of death from murder also. This is the true account of the matter. Now if, falsely reasoning from this amelioration, you carry your repeal of the penalty of death even to the crime of murder, you destroy all the good you have effected, and bring back the whole evil where it was before, nay, much worse; that is, inasmuch as you annex to murder no more dreadful consequences than to other crimes, a man will now commit murder to conceal his other crimes, just as before he felt compelled to do it for such concealment, because those crimes themselves were punishable with death.

§ 12. ABSURDITY DETECTED AND ILLUSTRATED.

The truth, then, is this; the improper application of the penalty of death increases crime, but this forms no

reason for its abrogation as the penalty for murder. I think I can illustrate the absurdity of the statistical argument by which you would force us to such abrogation, in a striking manner, from the science of medicine. Quinine, in medicine, is a grand remedy for fever; it is a specific, but it needs to be judiciously and skilfully applied. Suppose, now, that a set of quacks should use it injudiciously in the case of fever, and indiscriminately for almost all other diseases, whether of the heart, liver, or lungs, and that in consequence diseases should be multiplied instead of diminished by this medicine. Now gather your statistics of disease in such circumstances, and a strong argument for the abolition of quinine from the medical practice might be made out based upon them. But suppose again that the indiscriminate use of quinine should begin to be diminished, and in consequence it should be shown that diseases had diminished also; and the cause of such diminution being referred to the discontinuance of quinine, suppose you should be told that it is manifest that this remedy ought to be renounced not only in other diseases, but in fevers also. This would be an exact parallel to the statistical argument for the abolition of capital punishment. Would you accept such an argument? No, you would retain your quinine, but regulate its application. And so, if you are humane and wise, you will retain your salutary ordinance of death as a penalty for murder, but regulate its application. You will not suffer the abuse of a good thing to destroy its use. In almost all

reformations this has been the error of mankind. They have not distinguished between uses and abuses. Attacking an evil which was mingled with good, they have swept away the evil indeed, but the good along with it.

§ 13. RUSSIA, TUSCANY, AND BELGIUM.

You bring forward the case of Russia; but unfortunately for the argument, you bring forward no facts to sustain your statement. It is plainly denied, that for the time you assert there have been no capital punishments inflicted in Russia. It is perfectly well known, that under the reign of the Empress Elizabeth, so far from performing her pledge, many executions occurred; and under her order the dreadful punishment of the knout was inflicted on one of the most accomplished ladies of her court. And as to Catherine, she commenced her own reign with the murder of her husband and nephew, and reserved to herself ever the privilege of putting to death whom she pleased on the accusation of state crimes, and as a matter of state policy. A singular sort of abolition of capital punishment, truly! It is more than 80 years since, with this pretended clemency, Catherine began her reign. I find it distinctly denied that since that period there have been but few executions. Where are your statistical tables of the sentences passed and executed throughout all the fifty provinces of the vast territory of this despotism? It is said by travellers, that the code of Catherine has been long since disused. And who does not know the terrible

punishment of the knout, accompanied sometimes with the cutting out of the tongue, a punishment, which is often death, and which, at a signal of command, can be carried into death at a blow, and is sometimes thus administered, so that there is in it all the terror, with more than the cruelty of death, with the pretence and reputation of mildness. Humane constitution of things! Have so many persons died under the infliction of the knout? Oh, this was merely an unfortunate circumstance in administering the punishment; but the code is a very mild one; it abolishes punishment by death!

It does not abolish punishment by death. It simply takes that punishment away from the judges and the courts, through whom the law inflicts it in a free country, and puts it in the exclusive power and keeping of the monarch, to execute when and how he will. It simply makes a more perfect despotism. There is no trial by jury in Russia, and this taking away the power of death from the courts, to keep it solely at the discretion of the king, is only a mode of making him more awful to his subjects, while at the same time he gets the reputation of humanity. You might about as well say that in the despotism of Egypt, capital punishments are abolished, because nobody but Mohammed Ali has the liberty of cutting off men's heads. The argument from this case fails in every point.

Then as to Tuscany. The experiment, it is sufficient to say, proved so unsatisfactory, that the government restored the penalty of death for the restraint of crime,

and capital punishment is not now abolished in that kingdom. This is a double proof against you. The government, after trying your experiment, find themselves compelled to return to this statute.

Then as to Belgium. *Capital punishment has not been abolished.* The Code Napoleon is in practice. Murderers are still sentenced to death, and it is only since 1831 that Leopold has commuted the sentence at his own discretion, an experiment so entirely his own temporary fancy, and so little to be relied upon, that at this very time he may be signing a death-warrant for the execution of a criminal. If, since 1831, there had been no executions in New-York, but simply the punishment commuted by the Governor, you might, with the same propriety, assert its abolition here, and institute your statistics accordingly.

ARGUMENT OF THE THIRD EVENING.

§ 1. IMPORTANCE OF ADHERING TO THE AUTHORITY OF SCIPTURE ON THIS SUBJECT.

THERE is a singular desire on this subject to get rid of the authority of the Scriptures entirely. We have been told that it ought not to be brought into this discussion; that it is too much our habit, as clergymen, to bring it forward on every occasion! Now it is not a good sign to be afraid of the Scriptures, nor is there anything likely to cast more prejudice over the sincerity of your argument against capital punishment, than the manner in which, according to your own acknowledgment, it shuns the light of the Bible. I am sure that the separation between the expediency and theology of this question is an unnatural one. What is true in theology is expedient in practice, and cannot possibly be otherwise. If God appointed this statute for human beings, it is because it is expedient for human beings, it is for the best interests of mankind. All the statistics on this subject, all the comparisons between different modes of punishment, are before the Divine mind, and always

have been, and all the reason that is in them the Supreme Legislator must have known, and acted accordingly. All things considered, it was best that this penalty should be appointed, death as the penalty for murder. For the prevention of crime it was necessary; and I hazard nothing in supposing that had it not been for this penalty among the nations, millions of human beings that have died quietly, would have been sacrificed by the passions of mankind. The expediency of this penalty is therefore in the highest sense an expediency of benevolence; nor could the Divine being have been just to his own attribute of love, had he not annexed this penalty to this crime.

It is great principles of rectitude and benevolence, which must be our guide on such questions as the one before us, and not mere statistics, or temporary experiments; and if those principles are put into laws for us by our Divine Legislator, so much the better. You may reason against appealing to them in this form, and you may sneer at them as fanaticism, as much as you please; but on all great occasions involving practical questions of right and wrong in the community, the general mind will revert to them, and rest upon them. We may bless God for it. If it were not so, if these principles were not elements of our intelligent being, and did not possess a power superior to every consideration, the world to the end of time would be one vast scene of selfishness and cruelty. The principles of mere expediency would always prevail over the principle of right,

and men would prey upon each other like lions and tigers. Let those who make the outcry of fanaticism when benevolent men in moral emergencies attempt to sway the common people by abstract or scriptural principles, remember that it is to the power of those principles, and not to mere considerations of utility or expediency, that they themselves owe their own condition of happiness in human society.

The truth is that the ocean of man's being is swayed to and fro beneath the influence of the sublime eternal verities of Scripture, as the sea is dependent on the influence of heavenly bodies in the majestic regularity of the movement of its tides. Blot out those shining truths, pluck these orbs from the firmament, and you would leave naught but a waste of waters infinite, rolling in endless agitation, without law or object, as in the night and death of chaos. It is impossible that any system of policy can stand, which is not founded in God's word; and this is but saying likewise that no system can stand, which is not founded in the essential elements of man's being. The foundations of perpetuity in states and empires are only in the book of God, and when institutions are not supported there, they are not supported in the constituent elements of human nature. Time will prove their ruin; for as fast as the principles of man's being come out into notice in the light of the word of God, such institutions will be seen not only not based upon them, but in opposition to them. And whether they come into notice or not, they are per-

petually working. They heave the ocean, and nothing can abide the contest. It is the Bible, as formed for all time, and containing principles consonant with man's nature as made in the image of his God, and destined to be redeemed into that image, that comprehends and affords the only lasting principles of state policy. That state policy, which is not consonant with the wisdom of the Bible, will be found opposed to the developed wisdom of human society, and to the necessary principles of the human mind. It contains within itself the elements of its own destruction were it only in its opposition to the nature of the soul.

§ 2. WISDOM AND GOODNESS OF THE PENALTY OF DEATH FOR MURDER AS THE FOUNDATION OF CRIMINAL JURISPRUDENCE.

There is a concentration of wisdom and goodness in the statute given to Noah on murder, which we are but poorly able to appreciate. It was a legislation, which, taking the highest crime of which man is capable against his race, as the fit occasion for the concentration of its wisdom and benevolence, was to send its influence over the human character, and over all penal jurisprudence, down through the whole existence of mankind. It was to take the human conscience from its earliest development, and in answer to Cain's murderous question, "Am I my brother's keeper?" it was to answer, "Thou *art* thy brother's keeper; thou shalt love thy neighbour as thyself. Thou shalt no more dare to think of taking his life, than thou wouldst of taking thine own. To

take his life is in truth to take thine own; for thine shall surely answer for his." It was in fact the very perfection of criminal jurisprudence, making murder a suicidal act. The man that seeks to loosen the certainty of this statute, loosens a fundamental pillar of society. The statute is fastened deep in the principles of the human mind, and every stroke you aim at it, cuts at the roots of those principles. As it was intended to go through all human existence, so has it gone, so deep, broad, universal, that to give colour to your daring experiment, you can find in the history of the race for four thousand years, not one single state, in which for the period of a single generation, this penalty has been dispensed with. You may be sure this could not have been the case, were not this legislation consonant with and demanded by the elements of the human mind. This statute is a well-spring of truth: it is a shaft sunk into the soul of mankind that goes clear to the bottom of its sentiments, out of the reach of all mixture of sophistry, deeper than all cross views of a false and mawkish sentimentality, down into the living rock; and thence the stream that gushes up is the pure benevolence of truth as clear as crystal.

§ 3. TWO THINGS INCONTROVERTIBLE; MEN'S LOVE OF LIFE, AND THEIR FEAR OF DEATH.

To have any ground of plausibility in your argument from expediency for abolishing the penalty of death for murder, you have to deny two things; first, that life is

the most sacred and desirable of all possessions; and second, that death is the most terrible of all evils. Now on both these points the sense of mankind is undeniable. There may be deranged creatures, who deny both the desirableness of life, and the terribleness of death; just as there are hypochondriacs, who say that their heads are turned round upon their shoulders, so that they can only look behind them; and there may be inveterately hardened creatures, who have so drugged and stupified the moral sensibility with crime, that no consideration whatever will move them; but these exceptions no more weaken the power of the argument, than the fall of a solitary leaf in a great forest can prove the death of the whole foliage. You might as well bring forward one of your monsters of the menageries, your oxen with two heads, or your calves with five legs, to disprove by such a *lusus naturæ* the fact that oxen have but one head, and that calves are quadrupeds. You would be just as wise to take a petrified vegetable from the bottom of a swamp as an example of the qualities of the living vegetable world, as to take the heart of a Newgate criminal, to prove that death is not the greatest of evils.

Now, life being the most sacred of all possessions, it is the natural judgment of mankind that you must guard it by the most terrible of all penalties. But if life be the most precious of all possessions, the human mind again declares that death is the most dreadful of all evils, and therefore consequently the most powerful of all

penalties to restrain men from taking life. Until you have disproved these two things, you cannot advance one step in your argument. There is no room for you. You have to root out and destroy these two arguments of the human mind, that life is the most desirable and sacred of all possessions, and that Death is the King of Terrors. If you can do this, you can change the nature of mankind. But if not, then the conclusion is irresistible on the ground of expediency, that capital punishment is the most efficacious of all penalties to restrain men from the crime of murder, and consequently for the good of society ought to be practised.

It is useless for you to say that capital punishment does not restrain men from minor crimes. The judgment of the human mind is not the same as to the fitness and necessity of the penalty of death for such crimes. Take the case of stealing, for example. You have no prior declaration of the judgment of mankind that a man's property is the most sacred and desirable of all possessions, so that if a portion of it is taken, the greatest of all evils is inflicted; and consequently, the judgment of the mind is against the penalty of death in such a case. It does not assert the congruity of such a penalty with such a crime. But in regard to murder there is such a congruity; the voice of our common humanity asserts it. Taking life, you take all; and life being the most sacred and important of all possessions, the punishment by death, since it is feared more than all things, ought to be the penalty.

§ 4. CONTRADICTIONS IN THE ARGUMENT AGAINST THE PENALTY OF DEATH.

Here it is singular to see the contradictory nature of the arguments of our opponents. They speak with two voices. With one voice they say death is too severe, too dreadful, too barbarous: "the gospel and the gallows, Christ and the hangman," it is too shocking to humanity to think of. With the other voice they say it is not severe enough, not sufficiently dreadful; you must have a punishment more to be feared than death, and therefore more barbarous, in order more effectually to restrain crime. If there ever was an argument that stultified itself, this does. If we say death must be the penalty, because men fear death more than all things else, and we wish to restrain the murderer from committing crime; they say, Not at all; men do not fear death enough, this punishment has not enough of terror in it to restrain men. If we say, Death is the just penalty, and is demanded by benevolence, they say, Not at all: there is too much terror in it, it is too dreadful a punishment; we must have a milder one!

There is the same contradictory spirit in the play of their pretended humanity. The advocates for the abolition of the penalty of death for murder are perpetually boasting of their benevolence, and with most profound argument as well as tasteful rhetoric, they ring the changes to the vulgar ears upon such elegant phrases as the "gospel and the gallows, Christ and the hangman."

Now to some minds the juxta-position of the words Heaven and Hell gives just as mortal offence, with the idea of the same Being dispensing the rewards of the one, and the punishments of the other; and so does that of the phrases God and a consuming fire. This not being argument, I know not very well how to dispose of it. But as to the humanity of this question, so far from the opposition to this statute being the humane side, it is inhuman to the last degree. It is an effort not only devoid of benevolence, but characterized by great cruelty. It is cruelty to take away from the weak and defenceless that protection which is their only hope against the ferocity of the murderer. We have shown this too clearly to need a word more on the subject.

§ 5. INHUMANITY TO THE CRIMINAL AND TO SOCIETY OF STRIKING OUT THIS PENALTY.

To strike out this penalty against murder is as inhuman to the criminal as it is to society. This is easily demonstrated. Take the case of that drunkard, who would have murdered his wife, had it not been for this penalty; now in this case, by taking away this penalty, you would at once have occasioned the most enormous of crimes in that wretched man, and the miserable death of that unprotected mother. These two immeasurable evils would have followed your humane legislation. The same thing must take place in multitudes of instances, so that you would at once be creating assassins, and causing the murder of their victims. Therefore

humanity to murderers themselves calls on you to restrain them by this penalty in order to keep them from this crime, at the same time that humanity and justice to the innocent call on you to protect them from the passions of the murderer. The penalty is a warning; men see it from afar; it arrests their thoughts, their consciences, before they step within the circle of temptation; or, if hurried unawares, by violent passions, toward this point of danger and of guilt, still does the warning of this tremendous penalty arrest the soul, and bring the passions of the murderer to a stand even amid the wildest tempest. Now to strike out this penalty, is as inhuman as it would be, on a dangerous rock-bound coast, to destroy the light-house on the sharpest, roughest, most destructive reef across which the tide sweeps and beats its billows. Or I may say it is as if some enemy to mankind should confound the signals, by which the mariners of all countries have hitherto known their nearness to particular points of danger. Or it is as if, giving a chart to a ship bound on a long voyage, you should blot out the black warning scroll, that marks a sunken rock in the Atlantic right in that ship's course. We are all bound on the voyage of life, and the reefs of crime past which we sail are indeed many and terrible. But this is of such appalling magnitude, and the consequences of striking upon it are so dreadful, that there ought, if possible, to be a red light upon it, whose lurid blaze should glare at midnight over the whole ocean. In mercy to mankind God has himself erected such a sig-

nal, and you are struggling to tear it down. It is a most inhuman, cruel, anti-scriptural, and irreligious effort.

§ 6. THIS PENALTY CONFIRMED BY THE LAW OF CHRIST, AND DEMONSTRABLE AS A DUTY SPRINGING FROM THE GREAT LAW OF LOVE.

This pretence of humanity becomes one of unparalleled hypocrisy when it daringly attempts to array the Spirit of Christ in the New Testament against the Spirit of God in the Old. There is not only no contradiction, but a perfect accordance between the New Testament and the Old on this point. The law of Christ confirms this statute, and I repeat my assertion that it is repromulgated under the form of Love in the gospel. It is demonstrably deducible from the rule "Thou shalt love thy neighbour as thyself." How much do you love yourself? So much, that if a murderer were to set upon you to kill you, you would kill him in self-defence. Then you are bound to do the same for your neighbour. If a murderer sets upon your neighbour to kill him, you are bound to defend your neighbour, by putting, if need be, the murderer to death. But the same law of love binds the government to do this, especially when the community have to so great a degree relinquished this business of self-defence, in order that the government may perform it more effectually. Now the same law of benevolence, which ought to make a murderer know that if, while you are standing by, he attacks your neighbour to kill him, you will defend your neighbour by kill-

ing, if need be, the murderer, ought to make him feel that the government is exerting the same watchful care, and that if, while the government is standing by, he attempts to kill, or does kill your neighbour, the government also will protect your neighbour as you would, at the expense of the murderer's life. But as the effort of the government is protection and prevention, and not revenge, there is no possibility of this but by making the murderer know before-hand that if he murders, he shall himself die. If in every case of *attempted* murder, the government could itself stand by, and at the moment of peril draw its sword, it would be bound to cut off the murderer *before* he kills his victim; but as this is impossible, the next degree of protection must be resorted to, which is preventive, saying to the murderer, If you murder, you die yourself; the whole power of the government will be exerted to put you to death, if you kill another. But to say to the murderer, Thou shalt not surely die, is most inhumanly to give your neighbour up unprotected to the stab of the assassin. It is perfectly plain, therefore, that this statute is repromulgated in the great law of love, Thou shalt love thy neighbour as thyself.

§ 7. THIS PENALTY NECESSARY TO PRESERVE SOCIETY FROM THE ANARCHY AND VIOLENCE OF PRIVATE REVENGE.

The truth is, there is no alternative between the benevolence of this statute of death to the murderer, and the violence of private revenge. One or the other, so-

ciety will have, and if they throw off the protection of the one, they must endure the misery of the other. This protecting power must be lodged in the government, with a certainty of its execution, or men must go armed, and we must protect ourselves, and our neighbours too, against the murderer as we can. We may depend upon it that, as a general rule, these men who talk so loudly of the spirit of forgiveness, and quote scripture with so much volubility and delight, Resist not evil, Recompense to no man evil for evil, Vengeance is mine, I will repay, saith the Lord, will be the first to disallow and discredit their own doctrine, if you put them in personal danger; if you insult them when the laws of *dishonour* call for the duel; or if you take the life of a brother or a son. What then becomes of all their beautiful morality? They will avenge themselves, and if the government will not do it, it will be done at a cost of blood and violence and moral outrage in the community, more dreadful than twenty solemn public executions of the guilty.

There is such a spirit of revenge in the human heart, that you must guard against it. You must take its indulgence from individuals, where it exists as revenge, and commit it to the government to vindicate the law, without malice, without vindictiveness, in the form of justice and protection. When you say to another, Avenge not yourself, you must be prepared to say, The law will do it for you. When you say to another, Protect not your own rights, you must be prepared to say,

The government will protect them for you. If you do not, there ensues inevitably a shocking state of society. Let this statute be done away, and you will no more hear these persons who have attempted to set the gospel against it, preaching forgiveness. The maxims which our blessed Lord directs against private malice, they, with most intolerable sophistry, direct against that public, solemn justice of the government, which is God's own avenging interposition, as he has himself declared to us. Do that away, and then see if these men will give you any more of their homilies about not resisting evil, not avenging injuries.

§ 8. THE EFFORT AGAINST THIS PENALTY A MOCK HUMANITY, BUT A REAL CRUELTY—THIS DEMONSTRATED BY INCONTROVERTIBLE STATISTICS.

It is plain then that this effort is a *mock* humanity, but a *real* and wholesale cruelty. I will show you this by statistics. I find in the report of the Belgian Minister of Justice to the King, A. N. J. Ernst, that the number of murders in Belgium attempted or consummated from 1831 to 1834, and of which the authors remain unknown, were as follows: 6 poisonings, 60 infanticides, 119 assassinations: making in all 185. Now here are 185 murders in four years, that is, 462 murders in ten years. Now take the ten years to come and look forward. The question is, what is to be done for the security of society? Here are the lives of 462 innocent persons in danger; for, the same causes existing, the same crimes will be enacted these

ten years to come as the ten past. The assassins, you know, in some form or other, will attack these innocent persons. What are you bound to do? The least you can do is to threaten them with death, if they execute their purposes. You know that no other penalty, no lesser fear, has any effect upon them. To take away this penalty is in effect to say beforehand, We give up the 462 innocent persons unprotected, and without any effort to save them, to the stab of the assassin. We value the lives of the 462 assassins, more than the lives of their 462 intended victims. The assassins, although they destroy the lives of the 462 innocent persons, shall themselves be protected. I repeat it, this effort is a mock humanity, but a real and wholesale cruelty. This benevolence to murderers, but disregard of their victims, reminds me of the benevolence of that man alluded to with praise by my opponent, who would go a mile out of the way to avoid treading on a worm, while he was at the very same time thinking of murdering one of his fellow-creatures!

§ 9. WEAKNESS AND FALSEHOOD OF THE STATISTICAL ARGUMENT AGAINST THIS PENALTY.

I am now going to prove incontrovertibly the falsehood of the statistical argument of my opponent. You are well aware that it is the main foundation on which the advocates for abolishing capital punishment build, and that they have put it forth before us, as if it were impregnable. I shall show that it is not only unsafe,

but in its most important particulars absolutely untrue. Statistics by figures in morals are plausible, but if they be not very accurate, they are sure to go against you. In the present case this sort of reasoning is as a bridge thrown over a deep and rapid stream, where you are very likely to fall through. It reminds me of those bridges you may sometimes meet in the country, with a notice posted up at the entrance, "Five dollars fine for crossing this bridge faster than on a walk." Just so with this reasoning. If you will take passage in the carriage of the man that built the bridge, and go softly, you may perhaps go safely; but if you attempt to drive a great lumbering wagon of heavy argument across it, you shake it to pieces.

The first thing that strikes the mind in this statistical argument is the almost imperceptibly minute space of time that it covers. The only experiment which has been brought forward with reliable data of any kind, was one of five years! five years' commutation, not abolition of the penalty of death, in a European State not one twelfth part so large as the island kingdom of Great Britain! Now it is so ineffably absurd to pretend to draw conclusions for the legislation of the world from such an experiment, that the attempt becomes absolutely ludicrous. Even on the largest scale of territory, you cannot possibly rely on any experiments or statistics, which do not cover a space of time that goes through the whole education of the life of man. Any time less than a period sufficient for the whole formation and de-

velopment of human character is utterly vain. The effect must be seen on a whole generation. The second thing that strikes the mind in this argument is the utter impossibility of separating and distinguishing between the influence of concurring causes. You can never know how much other changes, events, systems of policy, or ameliorating influences—Sabbath-schools, Bibles, good books, tracts, and the prevalence of temperance—have combined to produce the effect ascribed by you to a single cause.

There may have been twenty causes operating to produce a change in the statistics of crime during a particular period, when an amelioration or change of any kind in the penal code may have had nothing to do with it. To keep the eye in such a case fixed only on this one cause is indeed absurd. You are always in danger of the *post hoc, propter hoc;* just as if an ignorant boor who has all his life got out of his bed before the dawn, should believe and say that his early rising was the cause of the sun's rising!

It is the argument of that old man to Master Sir Thomas More, of which Latimer gives us so amusing an account, that Tenterden steeple was the cause of Goodwin Sands; for he was a very old man, and he could remember the time when Tenterden steeple was built, but he could not remember to have heard anything said before that time, about the sands in Goodwin harbor; therefore he concluded that Tenterden steeple

was the cause of Goodwin Sands. This is the logic of my opponent.

§ 10. LENGTH OF TIME NECESSARY FOR A PROPER STATISTICAL EXPERIMENT.

I have said that the period of a generation is the least possible period for an experiment; you cannot in any less time, tell either what the human character and interests suffer, or what they gain by such a change. A system of law, we are to remember, is in a great degree the education of the community. Its influence is constant, silent, unnoticed, but mighty. It is a medicine of society, the operation of which, though not sudden, is lasting and powerful. The penalty of death for murder has been for thousands of years exerting a vast influence over the moral sense of mankind. It has acted on the conscience, it has helped the law of love, it has repressed crime, it has been an ingredient in our moral atmosphere, which at every inspiration of our moral being has gone into our circulation. If you take away its influence, you make a change that cannot at present be known fully in its disastrous effect. It is like a deleterious alteration in the combination of the gases that constitute our atmosphere. This penalty is a tonic to our moral constitution; the injurious effect of suspending it cannot possibly be seen in less than the growth of a complete generation. On the other hand, the principles on which this statute is founded are eternal and immutable; and when you grapple with principles, you are strong

and safe. They are as iron bolts in the solid rock of the mind; and unless you fasten your chains of argument to them, you have nothing to hold on by. Everything else is unstable and slippery, as shifting as the sand, and as dangerous to build upon.

§ 11. STATE OF THE CASE IN RUSSIA—CAPITAL PUNISHMENT NOT ABOLISHED THERE, BUT HELD IN THE POWER OF THE EMPEROR.

One would really have thought from the language of my opponent that all Europe had abandoned the statute of Capital Punishment; whereas, not one single State or nation can be found, where this is the case. We were pointed to Russia as an example of penal mildness and refinement, that ought to make us blush at our own barbarism. I have already stated some facts in regard to Russia, that totally change the aspect of the statistical argument here. I am informed in addition by a gentleman with whose high reputation we are all familiar, who has travelled extensively in Russia, and was well acquainted with the Emperor, (Rev. Dr. Baird), that murders are very frequent in that country. Of the 400 criminals whom he saw on one occasion about to depart into Siberia, he judges from statistical data, that one-tenth part were murderers. Criminals are sent to Siberia, partly for the purpose of colonizing that portion of the Russian empire. The punishment of the knout is first administered on murderers, sometimes the tongue has been cut off in addition, and if the criminal do not die in consequence of this barbarity, he goes into exile.

On every individual who escapes from exile and returns, capital punishment is inflicted. The infliction of death as a legal penalty was taken away, Dr. Baird believes, not from the opinion that it did not prevent crime, or was not the most effectual penalty, but because by irresponsible noblemen and corrupt courts, there being no trial by jury, the power was so shockingly abused, it was taken away from among the legal penalties, and reserved as a power of the throne only. This change it is believed was made because it would not do for the nobles to have the power of life and death over their serfs, with the power of swaying the judges at their pleasure, where there is no trial by jury, and the administration of justice in consequence fearfully corrupt.

Now you can no more reason from such a state of things to our country, than you could reason from Botany Bay to England. And yet this is the country to which we are pointed, forsooth, for an example of mildness and wisdom! A country without the privilege of trial by jury, a country where punishments of the most barbarous description are inflicted, a country which is an absolute despotism, increased in its unlimited power, by the very fact that capital punishment is taken from the legal penalties, and administered by the will of the Emperor!

§ 12. BELGIAN STATISTICS IN FAVOUR OF CAPITAL PUNISHMENT.

We come now to Belgium. I really know not how to account for the hardihood of our opponents in referring

to this case. I hold in my hand a report on the administration of criminal justice in Belgium, during the years 1831, 32, 33, and 34, presented by the Minister of Justice to the King. This is the period referred to by the other side with such daring confidence. If my opponents have not seen this work, I pity them for unconsciously bringing forward statistics in the teeth and eyes of truth; if they have seen it, I shall show the most outrageous misrepresentation. The whole of these statistics bear in favour of capital punishment, and decide with great strength, so far as such a little modicum of evidence can decide anything, against the abrogation or commutation of the penalty of death for murder.

The first classification among these statistics, which bears directly on our argument, distinguishes the crimes against persons, and against property. Under the head of crimes against persons are included, of course, the murders. Now from 1831, the time when the experiment of Leopold's lenity commenced, to 1835, the accusations for crimes against persons were increasing.

In	1831,	they were	123
"	1832,	" "	130
"	1833,	" "	122
"	1834,	" "	139

The last year of this experiment proved to be the most fruitful in crime. Among the crimes attempted or consummated, of which the authors were not discovered,

there were from 1831 to 1834, six poisonings, sixty infanticides, 119 assassinations; in all, 185 murders in four years. "In view of such grave statistics as these," the Minister of Justice remarks, that "it is manifest that the administration of criminal justice does uot possess the efficiency necessary for the restraint of crime."

It is important distinctly to remember that the period here spoken of is the very period, in regard to which it has been asserted by our opponents that the statistical results proved a diminution of crime under the abolition of capital punishment. In the first place, there was no such abolition, but only a temporary suspension of the penalty by Leopold. In the next place, under the experiment of this suspension, crimes increased, especially murders. In the third place, the authority of the Belgian Minister of Justice is beyond dispute on this point, and his statistics, and the conclusions by him drawn from them, are perfectly to be relied upon.

Proceeding a little farther in our examination and analysis of these statistics, and comparing the number of crimes of every kind unpunished, there were in 1831, 774; in 1834, 829; showing an increase in these four years. In 1831, the number of crimes in comparison with the population, was one to 6560 inhabitants; in 1834, one to 6476, showing in this way also an increase. The number of murders in the period from 1826 to 1830, when capital punishment was executed, being compared with that in the period from 1831 to 1834, when it was commuted, gives an increase in the

last period in proportion to the number of crimes, 36 being the annual average of murders, in that proportion, from 1826 to 1830, and 42 from 1831 to 1834. The Minister of Justice remarks, that from this table it is manifest that from 1831 to 1834, the number of assassinations and murders has increased compared with the five preceding years. Again, in the year 1829, when capital punishment was executed, only 11 persons were condemned to death; in 1830, only four; in 1831, when capital punishment began to be transmuted, it rose to nine, but in 1834, to 28;—here again an increase under the experiment of lenity. Once more, in 1831 the number of assaults and batteries was 4444; in 1834 it was 6051, showing an increase of 1600 under the experiment of lenity. In 1831 there were before the tribunal of police 21,711 criminals; in 1834, 24,756, showing an increase of more than 3000. During these four years there was a constant increase of crime. In 1831, the tribunal of simple police rendered 7897 judgments; in 1834, 11,762, an increase of 3865.

These Belgian statistics are thus proved to be triumphantly in favour of capital punishment. In view of these statistics, every person must be ready to say with the Minister of Justice, that the administration of criminal jurisprudence in Belgium, manifestly does not possess sufficient energy to restrain from crime. And what lesson do these statistics teach, as to the consequences of Leopold's experiment of not executing the penalty of death for murder? Surely, so far as any

conclusion can be drawn from so limited a period, it must be this, that Leopold's intention, being promulgated, occasioned from the first a relaxation of moral and penal restraint in the vicious community, the consequence of which was a marked increase of crime, especially of murders. In view of these statistics, given under the hand of the Minister of Justice, and certainly to be relied upon, I know not how to denominate the statistics to which we have been treated in the columns of some of the newspapers, and on which our opponents seem unfortunately to have rested, as anything else than a bare falsehood. It is highly probable that the statistics of Belgium for the last five years, exhibit proofs as strongly in favour of capital punishment, as for the four years whose record is before us; that is, if Leopold's lenity has been continued; for the consequence of an assurance that the law, though remaining, will not be executed against murderers, must be a lowering of the moral sense, and an increase of crime. The opinion of the Minister of Justice is strongly marked; had he been going to remonstrate against the king's experiment, he could hardly have said more; he has told king Leopold plainly that thus far during this experiment, crime of the worst kind is on the increase, that it has increased above and compared with the period preceding this experiment, and that his Majesty's criminal records prove that his criminal jurisprudence needs more energy. Thus the statistical argument from Belgium turns powerfully in favour of capital punishment; and both the

statistical and historical argument of my opponent, whether you take the case of Russia, Tuscany, or Belgium, breaks down at every step.

The case of Tuscany has been satisfactorily disposed of, the argument from the experiment there being turned directly against the abolition of capital punishment, since it has been found necessary by experience, probably from the increase of crime, as in Belgium, to return to that punishment. A resident on the spot, in Florence, near the time when the statute establishing capital punishment was repromulgated, gives the following account of the matter:

"The law abolishing capital punishment was promulged under Peter Leopold, grandfather of the reigning Duke. A new code has recently been published, in which capital punishment is threatened in certain cases. Thus Tuscany, whose example has often been quoted by those who would not leave the power of taking life to any tribunal, has gone back to her old position, and taken in her hand again the *sword* of justice, which many years ago she had laid down. The results of her experiment, of course, have not been satisfactory. An American resident of Florence observed that the number of murders in Tuscany in a single year, exceeded that of the murders committed in all the United States in the same period. However that may be, it is a clear case, that this humane government has felt the necessity of giving to the law which guards the life of the citizen, a

more fearful penalty than that which it has possessed for a long time past."

Thus the attempts to build an historical argument against the penalty of death for murder have all signally failed, as well as the pretences of a statistical argument. They cannot stand the test of truth. Time destroys the historical argument, even the semblance of it; it crumbles before the passing of a single generation; and a correct arithmetic turns the statistical argument on the other side.

§ 13. POWERFUL HISTORICAL ARGUMENT IN FAVOUR OF CAPITAL PUNISHMENT.

I shall now adduce to you on our side an historical argument of a very different nature. I shall refer you to the time in which the effects of the penalty of death for murder were tried in the most enlightened and civilized nation in the world for one thousand five hundred years. For more than one thousand five hundred years in the kingdom of Judea the experiment was tried, and the result was, that when the penalty of death for murder was most faithfully executed, the crime of murder was less common; but that in times when that penalty was not executed, or, against the requisitions of the Divine law, was evaded, murders and all other crimes became common; the land was full of blood; and the accusation of cruelty and oppression is brought against the nation, because its princes not only did not execute the law, but even themselves murdered with impunity. Now this is

a grand experiment; there is no being deceived in it; it is not a limited induction, but extends over one thousand five hundred years. And here let me remark that the Divine Legislator, under whose administration this experiment was tried, had a perfect knowledge of all objections that could be brought against it; there was the same uncertainty even in the best conducted legal investigations; the same difficulty of bringing the warped consciences of men up to the standard of the law; the same false philanthropy for the murderer, and unwillingness of jurors to convict; the same danger lest the innocent should be punished instead of the guilty; the same objection of dismissing a man into eternity unprepared for death; but in view of all these things the penalty of death for murder was affixed to the law, and the experiment was continued for more than one thousand five hundred years in the nation under God's particular care, while in regard to all other nations there stood unrepealed, the old Noachic ordinance, Whoso sheddeth man's blood, by man shall his blood be shed. Now I think this experiment may safely be put against any ten years in Belgium, or twenty in Tuscany, or eighty or one hundred under the wisdom of a murderer and adulteress, in the despotism of Russia.

§ 14. A FINAL OBJECTION ANSWERED.

There remains to be answered one objection. It is that of the danger of dismissing a man from probation in his sins. "By what authority," it is asked, "do we

limit the space of a man for repentance ?" The objection has, of course, no weight with those who found the duty to take the life of the criminal on the Divine injunction, because, it is the Divine Being, who, in the penalty itself, limits his space for repentance, just as he does that of every man, in his providence, by death. But I answer, first, my opponent has conceded the right of society, in certain cases, to take life, the right of a man in self-defence, and of society also. But is not this the limiting a man's space for repentance ? Is not this to run the hazard of cutting a man off in his sins ? Now if a man may do this suddenly in self-defence, much more may society do it deliberately, for the defence of society, allowing even the criminal abundant time for repentance. But we contend that a murderer, condemned to death, with several weeks intervening between the sentence and the execution, is incomparably more likely to repent than if you imprisoned him for life. Indeed, it is the declaration of God himself, that because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil. I suppose that we all, if we knew that sentence of death was issued against us, and would infallibly be executed within a few weeks, the time being fixed, should address ourselves much more diligently and effectually to the work of repentance than if we had an indefinite respite. And the sentence might be the very means of our repentance, while the respite might be the very means of our never repenting.

Why then should it not be so with the criminal? In this view, punishment by death is infinitely more humane to the spiritual interests of the murderer, than imprisonment for life. By imprisoning him for life, you may cause his eternal death; by sentencing him to death, you may cause his eternal salvation.

But this objection, to many minds, is met more powerfully by throwing it back upon the abolition of this penalty. It is those, who aim at abolishing this penalty, who would cause men to be sent into eternity unprepared. In the abolition of this penalty, the number of murders would inevitably be increased, and every individual so murdered is sent into eternity, not with the weeks of preparation, and all the solemn holy inducements and appliances allotted to the murderer, but in a moment, without a breath for prayer, without time so much as to say, God be merciful to me a sinner. Now I say without hesitation, it is worse to send one person into eternity in this manner, than it would be to send ten murderers with six weeks' warning. But if you were to repeal this penalty of death for murder, then by the increase of this crime, for every murderer now with solemn warning executed, you would probably be the occasion of sending two or three innocent persons unwarned and unprepared into eternity. This is an inevitable result on the repeal of this penalty. I say, therefore, that its abolition would be an act of impiety; for the substitution of imprisonment for life would probably make most murderers die in their sins, while it would

send many innocent persons unprepared into eternity. I turn this objection, therefore, back with tenfold power upon your own proposed repeal of the penalty of death for murder. It constitutes in the mind of every benevolent person one of the very strongest arguments against such a repeal.

§ 15. FINAL ATTEMPT TO EVADE THE STATUTE.—ABSURDITY OF THE EVASION DEMONSTRATED.

Before concluding my argument I must return for one moment to the great statute of Jehovah with which we set out, in order to expose the fallacy of the latest mode adopted by my opponent for evading the binding force of this statute. He proposes to render the ordinance, *among men*, instead of *by man* shall his blood be shed. Now, in the first place, this would not help the matter at all, since it may be powerfully argued, if you take this as the translation, that it manifestly refers to the solemn process, by which this statute shall be executed, not carelessly, or by single avengers, or without the consent of mankind, but by the judgment of men, by witnesses and judges, as afterwards more definitely these specifications were in fact added, serving as a signal commentary on the statute itself. So that, even if you render it *among men*, you gain nothing but this, that in all probability the magistracy itself is referred to, and the court of justice signified, as the way in which the penalty shall be affirmed, the sentence of the murderer issued. This would be the meaning if you render it *among men*, or

else it must mean simply *in the presence of men*, which is the sense of Vatablus says those persons wish, who interpret it *among men ;* "*Inter homines*, that is, *publice, et in conspectu omnium, cunctisque viventibus*," *among men*, that is, *publicly, and in the sight of all persons looking on*. This would not in the least degree diminish the force of this statute as an injunction. It is impossible that by this rendering you can convert the death of the murderer into an accident, that may or may not take place among men, for the *reason* why it shall always take place *is given*. And besides, if the murderer is put to death *among* men, it must still be *by* men that his execution is accomplished. It is not a flash of lightning that is to fall upon him, nor a death by drowning, nor any sudden and fatal pestilence provided for the murderer, but a death among men *by men*, by witnesses and judges. Every attempt to break violently through the hedge of this statute, only entangles the opponents of it more helplessly among its thorns.

My opponent has asserted, with astonishing hardihood, that the Septuagint translation is in favour of this rendering. So far is this from being true, that this rendering cannot be found in the Septuagint translation at all, which omits the phrase *by man* altogether, and simply says, "The person shedding the blood of man, for the blood of that man his blood shall be shed ;" giving the statute the same universal form of injunction, which it has in the Hebrew. The Septuagint translation is as follows: Ὁ ἐκχέων αἷμα ἀνθρωπος, ἀντὶ του αἵματος αὐτοῦ ἐκχυθήσεται.

The phrase *by man* is omitted, and it is simply ἀντὶ του, &c., which cannot possibly be rendered except by the phrase *for, instead of;* and if the words τὸ αὐτοῦ are added, as Le Clerc has suggested from the Complutensian manuscript, the sentence must be rendered thus: *the person shedding man's blood, instead of his blood that was shed, that of the murderer shall be shed.* This Septuagint translation therefore powerfully supports the interpretation of the ordinance as an injunction. It is not a prediction that in the course of Divine Providence, the murderer will die, but it is a statute, that *instead of* the person murdered, the murderer's blood shall be shed, that is, deliberately, designedly and speedily. Le Clerc himself interprets it, *pro sanguine hominis, ejus sanguis effundetur; for the blood of man, his blood shall be shed.*

My opponent has also gone so far as to assert, that Calvin's opinion was against the common interpretation of this passage. Now, so far is this from being the case, that Calvin distinctly says that in this statute *God arms the magistracy with the sword for the punishment of murderers.* Calvin renders the phrase which in our common translation is rendered *by man, in homine, in man,* and he does this simply because he thinks this phrase was used *to mark more expressly the atrocity of the guilt of murder.* He says that he does not deny that the punishment of murder with death, by the judges, is here meant, but that *more* is meant. God prepares other providential executioners of his law, at the same time that he arms the magistracy with the sword, in order that

the blood of man may not be shed with impunity. The opinion of Calvin, in his commentary, is so clearly and so strongly in favour of this statute as an injunction, that I cannot account for the manner in which my opponent has hazarded his credit, in appealing to this distinguished writer.

The direct and natural translation of the passage is *by man*, and not *among men;* so did the Jewish Targum of Onkelos render it; so did the Rabbins; so, before all, did Josephus; and they applied it to the magistracy; and Le Clerc, to whom my opponent refers, observes that the Hebrew preposition here used may everywhere (passim) signify *per*, *by*, or *through;* though, as in some peculiarities of Hebrew construction the sense of *inter*, or *among*, may be admitted, he prefers that sense in this place. But according to Le Clerc's own remark on the preposition, the most natural translation is *by man* and not *among men;* as it is also, *whosoever* and not *whatsoever;* and with these two poor attempts at critical ingenuity, the power of torturing upon this passage is exhausted. After you have stretched it on the rack, its meaning is still the same, and you cannot succeed in altering it.

The climax of absurdity to which the proposed rendering would reduce the whole statute, as a mere prediction, is so great that it is surprising it should find a single advocate. The Divine Being has just been uttering the solemn declaration that at the *hands of men* he would require the blood of man. Now if the question be asked, *How* will he require it? *how* will this threat

be fulfilled? this proposed interpretation gravely replies, Whoso sheddeth man's blood, that man—WILL DIE AMONG MEN! Wonderful conclusion, most wonderful! The murderer will, in God's providence, die; and not only so, but *among men* he will die! And this is the way in which God will require the blood of the murderer *at the hands of men!* And not only so, but the murderer will thus die *among men*, because *in the image of God made he man!*

In fact, neglecting the context, and attempting to change the common and natural translation of this statute, so as to make it other than a command, you fall into such absurdities, that it is only necessary to state them, in order to strengthen tenfold the assurance of every reader of the Bible in the faithfulness and accuracy of the translation as it stands.

§ 16. THE REASON GIVEN FOR THE PENALTY MAKES IT ABSOLUTELY CERTAIN THAT THIS ORDINANCE IS AN INJUNCTION.

In fact, the reason given for the penalty, stands directly in the way of every possible interpretation of this ordinance, save only that which is on the face of it, as a command. It is not an accident, nor an ordinary occurrence in the Divine Providence, whereby the blood of the murderer shall be shed, but a particular and perpetual determination of Jehovah, *for this reason*, that IN THE IMAGE OF GOD MADE HE MAN; and *therefore*, he that defaces and destroys that image by murder, shall solemnly be put to death. This putting to death must be

among men, or not at all; it is not among beasts, nor among angels; and this ordinance is itself the grand means of accomplishing this result; for without this ordinance murderers would no more be put to death than other criminals. Put, if you please, in any community, in the place of this ordinance, the mere prediction you contend for, and post at the head of your criminal jurisprudence just this; MEN THAT MURDER WILL CERTAINLY DIE; and then see if on this account murderers die any more frequently or violently than other men. Indeed, your mode of expounding this passage reduces it almost to a laughable absurdity. The wonder is that you have not gone one step farther in your critical sagacity, so as to interpret the declaration by man *shall his blood be shed*, as signifying simply that a vein shall be carefully punctured in the arm of the murderer, and a number of ounces of blood taken, and then imprisonment for life administered as the sentence. This amendment would be no more ridiculous than the other expedients, by which you seek to rid yourselves of what you candidly acknowledge to be a terrible *incubus* on your argument.

CONCLUSION.

THE RIGHT MODE OF DIRECTING PUBLIC OPINION.

The statistical argument is what my opponent has mainly relied upon, but it has proved to him unfaithful.

On the great moral and scriptural principles connected with this subject, the adversaries of the punishment of death for murder are unwilling to dwell. And this, most certainly, is a mark against their cause. But if they, or any community, are averse from the discussion of such a question upon such principles, so much the greater necessity of explaining and defending those principles. If public opinion is wrong, it is only thus that you can set it right. And if the public mind be greatly excited, you can gain nothing in any time of commotion on a great question, by withdrawing, or attempting to withdraw out of view the great principles around which all the agitation gathers. That agitation will continue, the elements will forever be disturbed, till those great principles find their proper place, and rule in all minds. Push them forth then into notice; make them more and more prominent; and then when once rooted and grounded, you will have a stable foundation for good order to rest upon. Till then you will have uncertainty, revolution, private revenge, and the horrible despotism of the passions of the multitude. It is a great mistake when you shun the encounter of a prejudice, or seek to allay a commotion, by shutting up a truth. There may be ignorance and prejudice in juries, there may be a mistaken or a depraved public opinion in communities. But to give up great principles on such occasions, or for such reasons, is just taking away the foundations that you may save the superstructure. It is nothing but the establishment and reverence of such principles that can

preserve aught that is blessed in Church or State. And it is the very madness of mock-prudence, through fear of the prejudices or passions of the multitude to shuffle out of view those sublime and awful truths, beneath whose powerful sway only it is that righteous law can be supported, and the passions of the multitude hushed to repose.

The protrusion of a great principle may arrest and excite all minds, and set the world in an uproar, but it will prevail for good. It is like throwing a vast mountain of granite into the sea. For a time you raise the whole ocean in fury; but wait awhile, and you see the waves that rolled in rival mountains, retreating from its rugged sides, and worshipping around it; and on its lofty summit you may fix a light-house for the world. The great principle given by Jehovah to Noah in this statute, and to the world through him, is such a lofty mountain, sustaining on its summit a light of life and legislation for all succeeding generations; and sure we are that the puny efforts directed from time to time against it will prove but as the foam and agitation of the idly raving billows in the ocean.

APPENDIX.

BRIEF EXAMINATION OF A LATE WORK ENTITLED 'THOUGHTS ON THE DEATH PENALTY,' BY CHARLES E. BURLEIGH.

Since the preceding essays were written, there has been published a work entitled, Thoughts on the Death Penalty, by Charles E. Burleigh. It may be thought that some attention is due to this production; and yet our almost exhausted limits will only allow of a very brief passing notice. To come directly to the merits of the work, we find it, on examination, characterized by two principal traits—dishonest reasoning, and confused statistics. By the first charge we mean, that, in some cases, the writer, for the sake of the conclusion then in hand, uses premises in which, as is evident from some of his own arguments, he does not sincerely believe. In other cases he stops short of conclusions which must inevitably follow from his positions legitimately carried out; and again, after proving one thing which hardly any person will deny, he changes his terms upon us, and makes use, in the subsequent reasoning, of a position very different from the one which he had previously, and for that purpose, maintained.

To make this matter more evident, we may say that the opponents of capital punishment may be divided into two classes. The first are those who profess to believe in the right of government, or violent resistance to evil-doing. These contend, as well as they can, that political society may be maintained without the death of the murderer, or that there are other punishments that may answer the same end. The other class are opposed to all punishment, in every sense of the word, and to any government which implies force or violent resistance to evil. Each of these classes might employ a mode of reasoning peculiar to themselves, and tolerably consistent, although inconclusive. Each, however, being weak in itself, is ever, when closely pressed, compelled to borrow something from the other; and this gives rise not only to confusion, but to insincerity. The first class inevitably run into the domains of the latter, whenever they appeal to the sermon on the Mount as condemnatory of the Jewish law for the punishment of murder; as there is no possibility of evading the conclusion that would apply the same argument to all forcible resistance to wrong-doing. Christ had no intention, in those maxims, of meddling at all with government and the power and duty of the magistrate in *any* department, or he meant to abolish them altogether. The second class, on the other hand, trespass upon the premises of the first, when they attempt to prop up their positions by statistical tables, designed to show the inefficiency of the punishment of death in preventing the crime of murder. Sometimes,

as in the book we are considering, the writer assumes both characters and reasons, now from the one, and now from the other theory, according to the pressing exigency of the then present argument.

We need not stop to show that such dishonesty and inconsistency of reasoning necessarily implies a weak cause. Our object is simply to point out the sophistry, and to furnish the reader with a key to detect the fallacies of the book, by exposing the manner in which they are employed. The writer clearly belongs to the sect of the no-government men. There is sufficient evidence of this in the work, and the author himself would probably not venture to deny it, after the public declaration of his sentiments about two years ago in a meeting of reformers. Had he adhered to that ground, he might have made an argument consistent, however weak; but then he would not have been in the best position for his allies of the other class, nor on the best grounds for influencing a community, who have not yet made sufficient progress to digest the strong meat of his more mature and perfect doctrines. He therefore regards himself as justified in using a little of what, if employed by others, he would doubtless characterize as a *pious fraud*, namely, assuming and arguing from premises in which he has no real or sincere belief.

Something of the same spirit is manifested in his treatment of the Old Testament. The most superficial reader cannot fail to gauge aright the measure of his belief in the inspiration of that portion of the Bible. In

one part of the book it is treated as an antiquated code, intended for a barbarous people, and containing laws and maxims, which, when speaking of them in other connections, he does not hesitate to denounce as inhuman, ferocious, and altogether unsuited to an age so humane as this. Again, he does not hesitate to quote, in the usual manner, the same part of the Scriptures as direct divine testimony in favour of some of his positions. He would make Moses (to say nothing of Him by whom Moses is said to have been inspired) stultify himself, by representing the sixth commandment—Thou shalt not kill—as in direct opposition to the law of a contiguous chapter, which not only *permits*, but *commands* that the murderer shall be put to death. Again, Ezekiel is quoted to prove that "God desires not the death of a sinner." Therefore—the author would reason—not only the prophet, but the Almighty, who spoke by the prophet, was opposed to taking the murderer's life. And yet this same Ezekiel grounds all the sanctions of his message, and all his authority as a prophet, upon the righteousness of that national law, whose violation forms the great burden of his message, and in which law the God who sent him declares—"*The murderer shall be surely put to death*"—"*Ye shall take him even from my altar that he may die*"—"*Moreover, ye shall take no satisfaction for the life of a murderer, but he shall be surely put to death*"—"*This shall be a statute unto you throughout all your dwellings, in all your generations; so ye shall not pollute the land wherein ye are; for blood it defileth the land.*" With

what solemnity too does this prophet appeal, not only in general terms to the laws of Moses, but to the violation of this very ordinance, in consequence of which murderers went unpunished, and the land was therefore defiled with blood! And yet Ezekiel is quoted as an authority against capital punishment. It is about on a par with the argument which, from this declaration of the Divine Mercy, some would draw against all punishment in a future world. We give this as one specimen out of many that might be offered. When we call it most dishonest reasoning, is the epithet any too strong? Can any one be mistaken as to the estimation in which the author holds the inspiration and authority of this part of the Bible, or doubt that he insults his readers, by pretending to argue from premises in which he has no more belief than Thomas Paine or Theodore Parker? In fact, one single sentence will show the estimation in which Mr. Burleigh holds all written revelation. "*A true expediency,*" he says, "*is as truly divine law as any text of Scripture.*" When we bear in mind that by "*a true expediency*" is meant, of course, Mr. Burleigh's views of expediency, no comment is necessary. He has, with the utmost exactness, gauged for us the precise measure of his reverence for, and his submission to the Holy Scriptures as an arbiter in any moral question. By such declarations he has, perhaps without being aware of it, taken off the veil from his own consciousness. Nothing could show more conclusively how deeply he feels, that the

testimony of these records of our faith presses most heavily against him.

The first class of opponents—that is, those who believe in the right of government to punish at all—must, if consistent, hold to three grounds, on which punishment may be inflicted by human laws. One is reformation—another, the safe keeping of the criminal—and the third, the influence of punishment as an example to deter others from crime. In the preceding essays there has been assigned a fourth, but this of course we would not think of arguing with Mr. Burleigh. He would deny its existence. There is no common ground, aside from the Scriptures, on which an argument could be built up, unless we appeal to the moral sense. His conscience, he would tell—whether he interprets it truly or not, or whether, in this respect, he is really an exception to the race we cannot say—but his conscience, he would perhaps affirm, does not respond to the doctrine, that either in the Divine or human government, sin is to be punished for any intrinsic demerit, or that the idea of retributive penalty is inherent in that of crime. On this point, therefore, we must leave him. In respect, however, to the other three grounds, the writer seems to admit them, as we should judge from parts of his argument taken separately; and yet they are so jumbled together; reasoning applicable to the one is so brought to bear upon the other, and the whole so mixed up in a mass of cloudy and irrelevant rhetoric on other topics, that it is impossible, from the book alone, to arrive at any definite

conception of what he regards as the true principles on which the State has a right to punish at all.

Reformation he evidently regards as the primary object. On this he dwells at great length, because it furnishes the best topic for declamation, and the indulgence, in his own peculiar way, of a strain of most pious sentimentality. Capital punishment, he says, prevents reformation. It cuts off the sinner in his impenitence. On this point the writer is most excessively orthodox. One might suppose, from his deep interest in the "state of the never-dying soul," that he was the most evangelical of the evangelicals; in short, that he did really hold, that after death there was a hell for the wicked, and something capital in the sentences of the Divine law, even, if there should be nothing of the kind in human systems. Now what must be thought of all this, when we call to mind that the author believes no such thing, any more than the Rev. Mr. Spear, and perhaps the Reverend Gentleman whom the Tribune takes so much pains, on all occasions, to style "an orthodox clergyman?" We would not call it merely whining or canting sentimentalism: as coming from those who are most fond of indulging in this strain, it is downright dishonesty. We want no other proof to sustain the charge than the book itself. The very conclusions of the writer nullify themselves. He holds, in this very treatise, that the great end of punishment is reformation. He makes no exceptions as to the divine law. The force of his argument, if it have any force at all, would go to prove that,

in the latter, this must not only be the great, but the sole end; since the divine government needs none of those aids of self-defence, which may be necessary for human institutions. According to his own argument, then, when carried out, the criminal, instead of going into "a dreadful eternity," actually passes into a state of well-being, or in other words, a condition of salutary and benevolent means of reformation. Now believing all this, what does the writer mean by "going unprepared into the other world," or "being cut off without space for repentance?" What does he mean by "the fearful risk" and "awful jeopardy of a human soul?" It is all CANT, and that too of the worst kind, because on the very face of it, it is hollow and insincere. If, however, he does mean any thing by it, and actually believes in such a hereafter, he might on the same grounds arraign the justice of God in the death of any human being who is suffered to die in an impenitent state—yea more, for suffering death to enter into our world at all.

This mode of proceeding is of no value as an argumentum ad hominem; because we hold that not only the rightful authority to put the murderer to death, but also the *entire right of government*, in short the right of men to restrain by law, or to exercise any kind of force against men, comes from God; or in other words, from the divine law and the divine oracles.

The murderer may be reformed, says the author. What need of many pages of confused declamation and affected pious sentimentality to prove this? The murder-

er may be reformed, and we think the fear of death the most likely means to produce that effect. At all events, if this does not, we despair of any means short of miraculous agencies: but what bearing has all this, until there has been disposed of that branch of the argument which has reference to the good of society and the deterring of others, to say nothing of the higher principle of retribution to which the writer does not even allude? David, says he, was a reformed murderer; and he tells the story of David's crime with a relish, an evident *goût*, that can leave but little doubt as to the school in which his tastes and creed have been formed; but what does it all prove, as long as there are admitted to be other and higher ends of punishment distinct from this? These, we contend, must be settled first, and the man is not entitled to be called, in any sense, a reasoner, who would devote the main part of his argument to a subordinate position.*

* Among other examples of reformed murderers, Mr. Burleigh refers to the case of the negro Jack Hodges, who had been condemned to death for a murder committed under circumstances which, it was judged, made him a fit subject for executive clemency. Jack was pardoned, and subsequently became a religious man, and continued to give evidence of sincere piety until his death. We have always read the account of Jack's *experience* with deep interest, but should certainly have thought, that it would have been the last case ever brought to sustain such a position. Why has not Mr. Burleigh given us the whole story? Nothing would furnish stronger proof of the power of law and of right ideas of retribution, when brought to bear directly upon the conscience. Had it not been for his sentence—ac-

The writer so mingles his facts and his reasonings together, that it is very seldom the reader can tell what particular branch of the argument they are intended to support. A large part has no relevancy unless taken in connection with what we have called the third end of punishment—namely, the effect of fear in deterring others—and yet we find the author, in other portions of his book, not impliedly, but most explicitly maintaining, that we have no right to put the murderer to death, because when arrested, he is in our power, and that, therefore, it is not required for self-defence. Now the doctrine of self-defence consists of two branches: one would relate to defence against the present murderer, the other to the future protection of society against future similar acts by other men. The first, although good ground for the opponent of all severity whatever which

cording to his own statement—he would probably have remained brutal and hardened to the day of his death. No one ever more fully admitted the *exact justice* of his doom. It was this sentiment which ever seemed to be uppermost in his account of his religious convictions. No word of railing ever escaped his lips. No one ever gave a more cordial assent to the principle of retribution, whether in divine or human government. It was not with Jack a philosophical tenet, but a deep conviction of that moral sense which the law had awakened within him. He was the last man to condemn the doctrine of capital punishment for murder. He had himself felt the true *re-forming* power of law upon his conscience. Hodges had in fact been initiated into a true philosophy, of which the school to which Mr. Burleigh belongs have probably little or no conception, and we would attach far more value to the convictions of his moral sense, in these disputed points, than to all their show of speculative argument.

goes beyond safe custody, has no kind of importance as long as the other is acknowledged to be not only a legitimate, but a higher ground of punishment. In the way Mr. Burleigh states the position, it not only shows that a great part of his statistics are of no relevancy, but also that he himself has no belief in that higher ground to which they are supposed to have relation. If the only true end of punishment is the safe keeping of the criminal (although the proposition cannot be expressed without an absurd contradiction in language), it is merely a question as to the strength of prison walls, and all statistics as to the effect of this or that penalty on the minds of others, are only impertinent and irrelevant matter.

It is also a very common thing with this writer, to lay out a great deal of strength against some very subordinate position of an opponent, which, even if shown to be unsound, can have no effect upon the main argument. An antagonist, for example, incidentally remarks, that condemnation to death must have a powerful influence in producing reflection and repentance. That such must be its tendency we need no proof from statistical tables. Every man finds a witness of the truth of this proposition in his own moral nature. It is never pretended that the result must infallibly follow. Now this is deemed a position worthy of a most vigorous assault. Facts are arrayed—and they are as abundant here as in the other cases—to show how hardened men sometimes are, even when placed in the most fearful circumstances, and all this, too, with the utmost simplicity, as though he had

not been occupied, a few pages before, with statistics of a directly opposite kind, to show how easily the murderer might be reformed. On this point the temptation to aim a blow at what he would style orthodoxy, is too strong for him to resist. Some preachers urge frequently the danger of putting off repentance until men are alarmed and disturbed by the terrors of death, as being an unfit period for so serious and important a work. And this is deemed a sufficient answer to the position! Most conclusive reasoning truly! Because, then, it is better for us if we can be induced to take so wise *a course*, to *invite and encourage* the consideration of serious thoughts in time of health, and before the approach of death, therefore there is in the latter consideration no motive for seriousness or reflection.

But we cannot dwell on these points. There is, we think, a plain and obvious course, which any candid opponent of capital punishment, who had not ulterior theological views to influence him, would adopt in respect to this question. Assuming as the chief end of punishment, the prevention of the commission of the crime by others, he might, as far as the reasoning is concerned, and if facts would permit him, consistently maintain, that other punishments less severe would be effectual to this end, and that, therefore, the penalty of death might be dispensed with, as a waste of moral means. On such a ground, his appropriate and consistent facts would be those which would show, not that the fear of death is *insufficient* to restrain, but that imprison-

ment, or some other inferior penalty, would exercise all the restraining influence that might be required. His statistics, then, would aim to present the improved condition of society and the great diminution of crime, from whatever cause it may have been brought about. He certainly would never think of shocking the common sense of mankind, by making the great increase of murders, and the recklessness with which they are committed, an argument for visiting them with a punishment less severe; and on the ground, too, that the previous penalty was cruel, and inconsistent with the spirit of an age so refined, yet so abundant in crime. If facts, we say, would bear him out, he might, in this way, make a consistent, if not a conclusive argument. The amount of it would be this. Society has so greatly improved; men have become so virtuous; there is such a universal detestation of the crime, and the cases of its occurrence are so extremely rare, that we can afford now to relax from former severity, and, in the very few instances that happen, try the effect of some milder remedies. He might avoid, too, any direct collision with the Bible, or any reviling of the Divine legislation as inhuman, cruel, &c., by supposing this improved state of society to have been the consequence of the wisdom of such legislation, and that, therefore, the Author of the Scriptures might be regarded as approving now a gentler course, and more in accordance, not with the spirit of the age, but with the spirit of the gospel. This would, we admit, be very weak and inconclusive as far as facts were con-

cerned; but it would at least have the appearance of regularity, fairness, and consistency of argument.

Again, there is another and an opposite course, which might with some degree of honesty and sincerity be adopted. It might be said, that experience has shown that the penalty of death has not been sufficient to deter men from crime. From this it might be inferred, that all inferior penalties must be still more useless. The conclusion then would follow, that government is in vain; that we had better try the experiment of being without laws, and in a state of entire non-resistance to evil of any kind. Some *seeming* support, too, of such a position, might perhaps be derived from the Sermon on the Mount, interpreted by the letter, and without regard to the circumstances attending its utterance. The greater part of the statistics which Mr. Burleigh has presented, would suit this argument exactly, and whatever force they have bears upon such a conclusion, and upon no other.

Each of these modes, we say, separately pursued, would have a show of consistency; but when they are jumbled together; when there is an attempt to reason now from the one, and again from the other, according as the writer has in mind this or that class of readers; when the Bible is at one time quoted in a most irrelevant manner, yet with a canting affectation of pious regard for its authority, and then again certain parts are referred to with an infidel sneer which seems borrowed from the school of Paine and Parker; when, in short, facts appli-

cable to the one course are attempted to be applied to the other, and statistics are piled up with no other effect or design than to give sophistry a chance of success in the midst of confusion, we have no hesitation in denouncing the course as dishonest, and indicative of every thing but an honest purpose.

In respect to the statistical facts themselves, we have room in our present limits for only the most general observations, without going into a minute examination of particular cases. We would therefore embrace them all in one or two views, and lay down a few principles applicable to the whole collectively. In the first place, these facts are entirely of a *negative* character. They prove, at the utmost, merely what capital punishment or the fear of death has been *unable* to effect. They do not reach, and, from the very nature of the case, cannot reach the thousands and tens of thousands of instances where the fear of death *may*, and, according to the best settled principles of human nature, *must* have deterred men from specific crimes, which they would otherwise have committed. As long as these are not and cannot be reached, no wise legislator would ever run the risk of acting upon mere negative facts, which only show wherein the law has failed of the designed result. We leave this position, as too plain to be argued. In the second place, the collector of these facts makes not the least account of that slow, silent, yet most effectual influence of law which we have styled its *educating power*,—its operation from infancy on the conscience, the imagination,

and every part of the moral nature, in producing a state of mind which never forms or even dwells upon the specific purpose, because, in consequence of indelible associations, it is shocked at the first thought or objective presentation of the crime. This mighty influence he does not and cannot estimate ; neither, on the other hand, the strong mischievous tendency of a contrary kind, which must slowly, yet inevitably, result in producing a decided change in the moral feelings and moral conceptions, corresponding to any great change in the fundamental and long-established principles of law. A generation or generations, as we have shown, might intervene before these gradual and silent, yet most powerful influences might manifest their strength for good or evil. Whether, then, they be for good or evil, all that we affirm at present is, that neither Mr. Burleigh's facts nor any similar statistics have any bearing whatever upon them, and therefore a wise and cautious legislator,—such as all legislators, especially on questions like this, should be,—would pause before he adopts any course which altogether leaves out of the estimate agencies so important as these. Such a legislator would, to say the least, require proofs very clear, very strong,—proofs gathered from every possible view of the subject, and these proofs long tested, before he would even think of abandoning the universal sentiment of all times, and of adopting in place of the clear declarations of an acknowledged divine legislation, that "expediency," which, as Mr. Burleigh affirms, "forms as much a part of the Divine

law as any text of Scripture." If we indeed want to get at that "law of nature," which, our author says, "is God's oldest statute and the basis of all law," we think that, aside from revelation, it is much more likely to be found in the almost uninterrupted sentiment of mankind for five thousand years, than in such very questionable inspiration as is claimed by the new school of transcendental philosophy.

But as for the facts themselves. A very large portion of the book is occupied with them. They are repeated in every variety of manner, and with every kind and degree of evidence. Some are tolerably clear; others confused, and utterly inconsistent, at least in their application, with each other. Some seem given on good authority; others have their apocryphal character on their very face; and others are standing stereotyped tales, which we have every reason to regard as the necessary accompanying poetry of a new philosophy. All, however, are supposed to prove the position, that men may and do commit murders and other great crimes, under circumstances which, we should think, would bring the fear of death directly before their minds; a fact which is likewise doubtless true of some in respect to the highest terrors of the Divine law. Page after page is devoted to accounts of persons who have been guilty of crime in sight of the gallows, and in a great number of cases after having witnessed a public execution. The evidence is taken from newspapers, from reports of ex

parte legislative committees, from statistical tables, drawn up by philanthropic reformers, &c., &c.

Now we should certainly deem it a very useless and foolish thing to take any pains to prove these statistics true or false. It ought rather to provoke a smile, to see how the writer labours on this point, as though mere *accumulation* could ever give relevancy to facts which do not possess it singly and in their own nature. We could have suggested a shorter way, by which a great deal of the trouble of collecting this evidence might have been saved. There can be but little doubt that almost every person above thirty years of age in this country, has, at some period of his life, either witnessed some public execution, or else has been in such close vicinity to it, as to have derived almost as vivid an impression as could have been produced by the scene* itself. It is probable that at least one half of all persons

* In respect to public executions, we would here say, in addition to the remarks previously made, that we are satisfied our legislators committed a great mistake in allowing the change to a private infliction of the sentence. It was brought about by the clamour and wretched sentimentalism of these pseudo-philanthropists; and their own work is now used by them as an argument for the total abolition. We have greatly underrated the restraining effect of the awful example of public justice. All punishments should be public; for it is their privacy which takes from them the healthful moral impression of law, and gives them that odious appearance of private revenge, of which our reformers have so much to say. We are happy to know that in this, we are sustained by the opinion of that most upright, learned, healthy-minded, long-experienced judge, and most virtuous and estimable man, Chancellor Kent.

who commit murder and other crimes, have at some time been present at an execution. We see no necessity of occupying so large a portion of his book to prove this.

Now conceding, on this point, as much and more than the author can ever establish, the next question is—What does it all show? It proves he might say that the fear of death will not restrain men from crime. Very well, let us admit the position without dispute. The fear of death will not restrain men from crime. The fear of death has more influence on the minds of men than the fear of imprisonment; it is dreaded as a far greater and sorer evil. This second premise we will not outrage the common sense of our readers by arguing. If then the fear of death will not restrain men from crime, no lesser fear will have that effect. The great and principal ground of punishment, then—even as those grounds are set forth by those who deny the divine right of government—is gone. Nothing remains but simply the safe keeping of offenders in the gentlest way, and with the least possible necessary restraint, and without any kind of regard to aggravations or gradations in crime; for if any respect is paid to these, we are at once, as we have shown, acting upon a totally different theory. As, however, criminals may reform, they must not be kept under restraint a moment after they have professed such reformation and repentance; and our author even suggests that they be used like reformed drunkards in lecturing to others. Now how far are we from the no-government theory? We know that there is no middle ground, and no escape

from the conclusion its advocates would draw from such premises and such reasoning. We know, too, that this is Mr. Burleigh's real ground, but he does not wish to assume it here, because it would be inconsistent with some of his other positions, and because it would not be good policy at present to maintain such a doctrine undisguised, before the community to which he addresses himself.

Let us present this in another point of view. Let us suppose a man of plain common sense engaged simply in reading these accumulated facts, without knowing any thing of the design for which they are brought forward. His first impression perhaps would be, that the collector is a most exceedingly orthodox person of the most ultra-Calvinistic stamp, and that his object, in this mass of facts, is probably to prove the doctrine of total depravity; or he might fancy, that it was intended to show that death by hanging was not sufficiently severe to produce the preventing effect, and that the writer had some plan to propose to the legislature for reviving the old modes of punishing by burning, impaling, or crucifixion. To his mind the syllogism (to give it in a very general form, and without that logical correctness which would require several statements) would stand thus—

The crime of murder must be prevented by an *adequate* punishment.

The above facts show that death by hanging is not adequate, in consequence of not being sufficiently severe.

Therefore, there is need of some more severe penalty than hanging to deter men from this crime.

This would certainly be the only conclusion at which he could arrive ; but what would be his surprise, on being told, that the doctrine the author deduced from all this was, that the murderer ought not to be punished at all, in any true sense of the word, but only held in safe keeping, until he gave evidence of reformation. There is something about this argument which is utterly incomprehensible. The writer would have us believe, that punishing men with death actually operates as an inducement to commit crime. We are aware that one of the methods by which he defends this most strange conclusion is, by saying, that the example of the law teaches men revenge (a position to which we will presently pay attention) ; but this, if it had any force at all, would only be applicable to cases of murder ; whereas his facts, if they prove any thing, do most certainly show, and with equal conclusiveness, that hanging actually operates as a means of making men commit more forgeries, and more thefts. If he means that this is the consequence of the uncertainties of the sentence (a position which he himself in another place (page 89) invalidates by facts brought to prove, that the diminution of murders in certain countries was in consequence of sparing a large proportion of those who had been convicted and condemned), why does he thus jumble his facts all together, mingling in one confused mass those that relate, if they have any

bearing at all, to totally different principles? The only inference to be drawn is, that his facts are alike worthless, and may be equally well applied to any hypothesis he may wish to support.

Probably the most absurd part of these statistics consists of another class of facts, by which he attempts to show, that a decrease in the number of executions has been followed by a diminution of cases of murder. Such examples have been frequently brought forward by others. The answer to them is so obvious and so conclusive, that it seems strange they should be ever again repeated. It is the miserable fallacy of putting the cause for the effect. Either from the direct action of the law itself, or from some other agency, or, it may be, from some of those accidental coincidences of which statistic hunters can always find examples in one country, if not in another—from some such agencies, it may be, that there has been a diminution of murders, and of course a decrease in the number of convictions and executions for the same. Now can anything be plainer evidence of a weak cause, than when men attempt, from such facts as these, to array statistical tables, designed to show, that the diminution of the crime is *a consequence* (!) of the decrease of executions? There is an exceedingly lame attempt to meet this objection in the book we are considering, by saying that the convictions were more numerous than the executions. How this alters the case, except to cause the argument to bear still more strongly against them, we have tried in vain to compre-

hend. Let us take from the book one specimen, which will serve for all the rest. We select that of Prussia, on page 88, as presenting one of the clearest examples of this kind of reasoning. "In Prussia," says Mr. Burleigh, "no crime but murder is punished with death. Whilst executions decreased in the 15 years ending with 1834, from 54 in the first five years, to 33 in the next, and 19 in the third; convictions of murder fell from 69 in the first, to 50 in the second, and 43 in the third." Now as far as we can ascertain, from the most careful study of these numbers, the author's reasoning would be this—There were more executions in the first period than in the second; therefore there were, *as a consequence*, more murders in the second than in the third; or which would amount to the same thing—there were fewer executed in the second than in the first, therefore there were fewer murders in the third than in the second. Here is certainly mathematics with a vengeance; but why, we would ask in all seriousness, may not the argument be stated just as well, to say the least, in the following manner: Because, out of 69 convicted murderers, 54 were executed, therefore, as *a consequence* of this rigid administration of justice, there were but 50 murders in all in the second period; and because out of 50 murderers in the second period, 33 were executed, therefore, as *a consequence* of this and the preceding examples of righteous legal retribution, there were but 43 murders in the third. The writer would insist, that the decrease in the cases of murder was a consequence of

the number spared, and not of the number executed; otherwise the statements prove nothing for him; but his own figures justify the directly contrary inference. The ratio of the executed to the spared was greater in the first than in the second, and therefore, we may say, the murders diminished more rapidly (that is, from 69 to 50) between the first and second periods, than they did between the second and third, when, in consequence of greater preceding clemency, they only fell from 50 to 43. We wish the reader carefully to compare the statements and reasonings in this place, with those that in other parts of the book are presented to show, that murders and all other crimes increase, in consequence of the non-execution of sentences. We refer especially to the examples brought from the English law. On page 56 we are told, that out of 7656 convictions, there were but 528 executions: "this relaxed execution of the law," says our author, "tended to encourage the commission of crime." There is page after page of the same kind of statements. The inferences in these last mentioned cases may be regarded as tolerably sound; but was there ever a more palpable and direct contradiction than there is between those "*facts in proof*," as the author styles them, and "*those other facts in proof*" we are now considering, by which he attempts to show that the fewer the executions in proportion to the convictions, the fewer were the number of subsequent cases of the crime? What must we think of an argument which has

so many contradictory aspects, and always finds *facts* to suit them all ?

If the statements on page 88 prove any thing, it is the effect of the rigid administration of justice, and yet no man who knows any thing of human nature, and of the true cause of the increase or diminution of crime, would attach much if any value to such calculations, to whichever side of the question they may seem to incline. An interval of five years, or even of ten, is too short to warrant us in expecting any decided change, either from the repeal of one class of penalties, or the enactment of others still more severe. Those persons who are ripe for crime would commit nearly as many, perhaps a few more in the first case, and a few less in the second, whilst the general state of all whose souls had been previously trained to law would remain the same. When time enough had elapsed for good or bad principles of legislation to affect the minds of succeeding generations, and to produce different moral and legal associations in the great mass of the community, then the fruits, whether for good or evil, might make themselves apparent. We dread far more the influence of this new philosophy of law and punishment, in gradually, yet surely undermining the moral and political virtue of the community, than any immediate effects of special legislation, however bad, if disconnected from such philosophy. It is when the law gets thoroughly inoculated with this poison of false principles, whose effects we are endeavouring to resist,

that the most mischievous and destructive consequences may be expected to ensue.

One great position of this writer, and of most others on the same side, is, that the punishment of death makes men revengeful and ferocious; that this is not an incidental effect merely, but inherent in, and inseparable from its very nature; that therefore it must have belonged to it at all times, and under all circumstances. Attention has been given to this position before; but as it enters so largely into Mr. Burleigh's reasoning and the facts on which he professes to ground it, we propose to devote again to it a little more space, and bring the whole argument to a short, yet legitimate issue. The first reply would be an appeal to the moral sense, and to that most clear and important distinction, which every sound mind and conscience makes, between individual *revenge* and the *vengeance* or justice of law. We have shown that the latter is not only the antithesis, but the true cure, and most effectual remedy for the former; that there is a feeling in human nature, which is the foundation of all true virtue, and constitutes the moral health of the soul; which feeling must find its approbation of right, and condemnation of wrong, in unison with the justice of law, and have vent in the application of its righteous principles, or it must inevitably degenerate and sink into that very state of individual revenge which these writers so loudly condemn. If this latter feeling has been ever excited by the spectacle of public justice, we charge it directly upon the mental and moral associ-

ations created by these very reformers, who have for years been most perseveringly labouring to asperse the law, impugn its principles, and give it an odious character with all of the community over whom they can exert an influence. Indeed, there is no aspect of this question which is more justly calculated to arouse a feeling of most righteous indignation, than a consideration of the manner in which these revilers of the law take advantage of their own wrong. Knowing how easy it is, at the present day, to get up an excitement on any subject, by constantly and systematically repeating that there is such an excitement, and then, after grossly and wickedly exaggerating what they call "the strong abhorrence of the gallows," and thus directly inducing their few real followers, in different parts of the State, to make all the trouble they can in the proceedings of courts and juries (for a very small number indeed may in this way excite an attention, which, to a superficial observer, would seem like a general uneasiness throughout the community), they make use of these very things as an argument in their favour. "If capital punishment is sustained by the public voice," says a late Tribune, "we think those opposed should waive objections (most remarkable deference indeed to law!) until time, with the progress of *intelligence (!) and humane ideas*, shall demand a review of the verdict." That is, we will most condescendingly submit to the law; we won't directly join with mobs, or shoot sheriffs, but we will never cease our agitation or our efforts to render the law odious, and then, when we have

produced an impression, on whatever grounds, that it cannot be well sustained, we will again demand its abolition for that reason, irrespective of its real and intrinsic merits. We have no doubt that by such agitation of such men, crime, for a number of years past, has actually been increased among us. They furnish the man who meditates murder, with a false, yet readily embraced plea, by telling him, so repeatedly, that he only imitates a murderous law. We can easily see how the doctrine, as thus taught, finds a response in the heart of every villain who wishes it for an apology. A man can hardly commit a more serious offence, than thus to unsettle fundamental ideas, and poison the very fountains of law and justice. Far different, however, is the influence of these ideas in their unperverted state. Their true effect, we say, upon a sound mind (and we appeal to consciousness) is to still the feeling of the individual and the selfish, in the *transforming* contemplation of the abstract justice and majesty of law.

There is, however, another and more serious aspect of the matter, which we have dwelt upon before; but because we regard it as shutting every door by which a dishonest infidel philosophy may make its escape, we again repeat it, and, to place the matter in the clearest light, we put the argument in the syllogistic form.

(The punishment of death for murder is one which has
" a natural tendency to make men revengeful and
ferocious," to " pervert the sense of right and

lessen the natural horror at the thought of shedding blood," to "teach a doctrine and set an example helping to form men for the commission of murder."

The punishment of death for murder is one which the Almighty God established, in express terms, for a nation, for whom he condescended to legislate as his own peculiar people.

Therefore the Almighty God established, &c., a law, the natural tendency of which is to make men revengeful and ferocious, which perverts the sense of right, teaches a lesson and sets an example helping to form men for the commission of murder.

We care not now whether the Jewish law is binding specifically on us or not; we are only defending its character from the aspersions and blasphemies of men, who, if they thus teach, deserve no other name, and whom we do not therefore at all hesitate to style infidels. The first premise is taken word for word from Mr. Burleigh's book. It is, besides, well known to be the common language of many (not all) who are opposed to capital punishment. The second premise is just as true or false as the truth or falsehood of the Bible. The blasphemous conclusion needs no comment.

If there is an attempt to evade the force of this, by pleading that the barbarous condition of the Jews re-

quired such legislation, it only involves them in a still deeper difficulty. It would then stand thus—

If the natural effect of any law is to make men revengeful, ferocious, and to form them for the commission of murder, &c., then, *à fortiori*, must such effects be greater upon a barbarous and uncivilized, than upon a refined and civilized people.

The punishment of death for murder is such a law.

Therefore the punishment of death for murder has a natural tendency to render a barbarous people still more cruel, ferocious, inhuman, &c.

But the Almighty did expressly impose such a law upon the barbarous and uncivilized nation of Jews.

Therefore, &c.

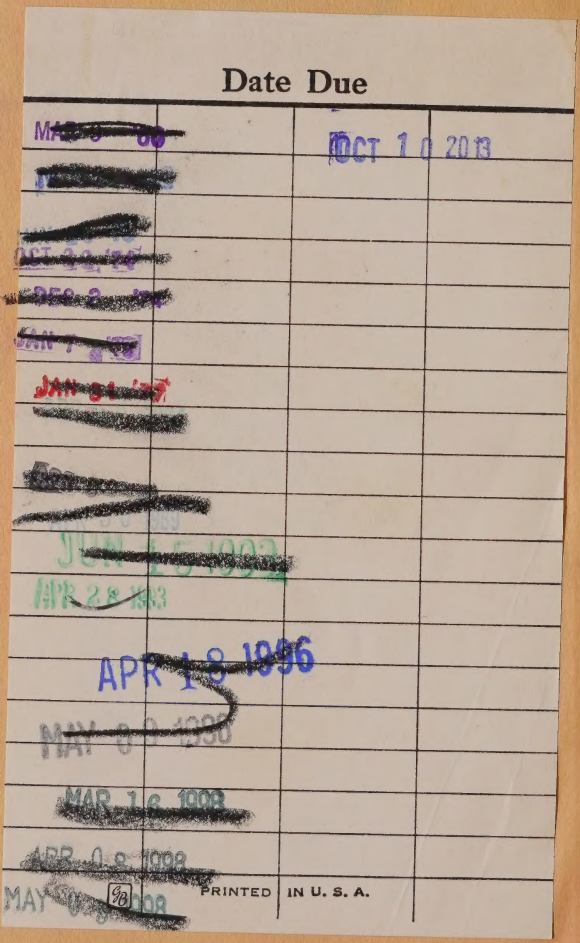
We will not repeat the blasphemous conclusion. Its enormity is heightened by the consideration, that this was to be no temporary law for the Jews, but a fundamental and abiding statute;—"*So this shall be for a statute of judgment unto you throughout all your generations, in all the places of your inhabiting.*" Numbers xxxv. 29. Can any rational man, be he infidel or Christian, suppose for a moment, that Mr. Burleigh, and all who use such language or such reasoning, have any kind of belief that the express declarations we have quoted from the Jewish Scriptures were ever really uttered by the Almighty? We are charitable in styling them infidels;

under no other character can they be acquitted on the far worse charge of deliberate blasphemy. They believe no such thing. No human credulity is large enough to embrace such an absurdity. If they affirm the first premise, as they do abundantly in every part of their writings, then they must deny the second, which asserts that such a law was given by the Almighty. The conclusion to which they are brought is one from which no subtlety or sophistry can ever enable them to escape.

We may be charged with endeavouring to excite the *odium theologicum ;* but we contend, that we are only repelling a most insolent attack upon all who believe the Old Testament to be a part of God's inspired revelation. Language is constantly used in reference to a law, admitted by all to be contained therein, which we would not use towards any document, however irrelevant, which they might introduce. Epithets have been applied to what purports to be a prominent part of a scheme of Divine legislation, which we would not think of applying to O'Sullivan's report, or to any of the most violent assaults of Mr. Burleigh or the Tribune. Let us present this case fairly. We may lawfully use the Scriptures in two ways: we may appeal to their declarations as articles of faith, or express commands specifically binding on us. Such is the use we would make of Genesis ix. 6. Again, we may introduce them as historical authorities, to prove or to defend the *character and expediency* of certain measures of morals or legisla-

tion, by examples of the Divine procedure in certain cases. Now we are all fond of appealing to authorities, both ancient and modern. In such a discussion, no one would regard as out of place a declaration of Cicero, or of Aristotle, or Bacon; or a reference to legislation of which they were the authors, or of which they had approved. Our author appeals with great confidence to the report of Mr. O'Sullivan, to the arguments of a committee of the Pennsylvania legislature, to that most humane and most virtuous character, Catharine II. of Russia, to the messages of sundry governors of States, to the speeches of members of Congress, &c., &c. Now we might offset against these some very great names of ancient and modern times; just as Mr. Burleigh would doubtless attach great importance to the opinions of Confucius, or Zoroaster, or even of the famous Apollonius of Tyanea, could any such be found in support of his side of the argument; and would doubtless parade them before his readers with great show of authority. As matter of argument, we certainly should not blame him for this. In like manner, however, we resort to *our authorities*. We esteem Moses as one of these, and that too of no mean value, even when regarded simply as a human legislator. Above all, if we could get access to any *well-authenticated* records of some ancient people for whom the Deity himself condescended to legislate, we should certainly feel ourselves warranted in believing that we had found something of far more weight than Mr. Burleigh's inspired views of expediency, which

he regards to be "as *truly divine* as any text of Scripture" (see page 122). Just such an invaluable record we think is contained in the history and legislation of the Jewish people. In this old document we discover the very authority for which we have been searching. We read there that the All-wise, the All-good, and the Almighty God gave that people, in the most express terms, just such a law, to be "*a perpetual statute in all their generations.*" Now we cannot help attaching great importance to this. We do really think that it ought to have rather more weight than O'Sullivan's Report, or any opinions even of men as respectable and as high in office as Vice-President Dallas or Vice-Chancellor M'Koun. We appeal without scruple to the feelings, or prejudices, if any choose to call them such, of those who revere it. If its genuineness is denied in an open and manly manner, we would, in the same spirit, endeavour to furnish its historic proofs; but when men seek to stab indirectly what they have not the ingenuousness openly to meet, and to undermine the influence of what they would be thought to believe, let them not complain, if those who do revere the Bible as a powerful auxiliary in their argument, place them in their true position in relation to it.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